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Supreme Court of the United States

OCTOBER TERM, 1940

No. 251

**MILLINERY CREATOR'S GUILD, INC. (FORMERLY
MILLINERY QUALITY GUILD, INC.), ET AL.,
PETITIONERS,**

vs.

FEDERAL TRADE COMMISSION

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 18, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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[fol. i]

**IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

No. 15,688

MILLINERY CREATOR'S GUILD, INC. (formerly Millinery Quality Guild, Inc.). Dave Herstein Company, Farrington and Evans, Inc., Cooper-Russell, Inc., G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Oriole Hat Company, John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company, Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Fredericks, Inc., Minnie Kramer, Inc., Nicole De Paris, Inc., Florence Reichman, Inc., Marion Vallé, Inc., Sergin F. Victor, an individual trading as "Serge"; Pauline Kahn, an individual trading as "Mme. Pauline", Harry Solomons and May F. Solomons, co-partners trading as "Harry Solomons and Sons", Petitioners,

against

FEDERAL TRADE COMMISSION, Respondent

**PETITION TO REVIEW ORDER OF FEDERAL TRADE COMMISSION—
Filed November 19, 1937**

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

The Petitioners respectfully represent upon information and belief:

1. The petitioner, Millinery Creator's Guild, Inc. (here-[fol. ii] tofore known as Millinery Quality Guild, Inc.), is a corporation organized, existing and doing business under the laws of the State of New York, having its principal office and place of business at 711 Fifth Avenue, in the City, County and State of New York, and within this Circuit.

2. That petitioners, Dave Herstein Company, Farrington and Evans, Inc., Cooper-Russell, Inc., G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Oriole Hat Company, John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Gladys and Belle, Inc., Hat-

negie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole De Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., are corporations duly organized and existing under the laws of the State of New York and have their principal offices and places of business in the City, County and State of New York, and within this Circuit.

3. That petitioner, Simon Millinery Company is a corporation duly organized and existing under the laws of the State of California, having its principal office in the City of San Francisco, State of California.

4. That petitioner Sergin F. Victor is an individual trading as "Serge" and has his place of business in the City, County and State of New York, and within this Circuit.

5. That petitioner Pauline Kahn is an individual trading as "Mme. Pauline" and has her place of business in the City, County and State of New York, and within this Circuit.

6. That petitioners Harry Solomons and May F. Solomons are copartners trading as "Harry Solomons and [fol. iii] Sons" and have their principal place of business in the City, County and State of New York, and within this Circuit.

7. That heretofore and on or about the 21st day of May, 1936, the respondent Federal Trade Commission issued, filed and served its complaint against your petitioners, charging your petitioners with the use of unfair methods of competition in violation of Section 5 of an Act of Congress approved September 26, 1914 (15 U. S. C. A. Section 45) entitled, "An Act to Create a Federal Trade Commission, to Define its Powers and Duties, and for other Purposes," copy of which complaint will appear in the transcript of record in said proceeding to be filed herein by the said respondent.

8. That on or about July 14, 1936, your petitioners duly served and filed their answer to said complaint, denying the material allegations thereof, copy of which answer will appear in said transcript so to be filed.

9. That issue having been joined in the said proceeding between your petitioners and the respondent, testimony was thereupon adduced and evidence received in behalf of Federal Trade Commission before said Commission through

its Trial Examiner, duly appointed by said respondent to hear and receive such testimony and other evidence at hearings held in the City of New York, as more fully will appear from the printed transcript of the entire record in said proceeding to be filed herein by the said respondent.

10. That thereafter and on or about the 22nd day of September, 1936, a written stipulation as to the facts upon which the proceeding was based was entered into by counsel for the petitioners and counsel for the respondent, copy [fol. iv] of which stipulation will appear in the transcript of record in said proceeding to be filed herein by the said respondent.

11. That thereafter and on or about the 11th day of December, 1936, pursuant to its rules of procedure, respondent by its said Trial Examiner, issued, filed and served upon your petitioners the said Trial Examiner's report and findings as to the facts, copy of which said findings and report will appear in the transcript of record in said proceeding to be filed herein by the said respondent.

12. That thereafter and on or about December 21, 1936, pursuant to the requirements of said rules of procedure your petitioner duly made, served and filed its exception to the said Trial Examiner's report and findings as to the facts, copy of which exception will appear in the transcript of record in said proceeding to be filed herein by said respondent, and did in its exception specify the particular part of the said Trial Examiner's report and findings as to the facts to which exception was made and taken.

13. That thereafter a brief was filed by the counsel for the respondent and a brief and supplemental brief were filed by counsel for the petitioners, and on or about the 17th day of March, 1937, argument of counsel was had before the said respondent upon the issues of fact and of law in the said proceeding in behalf of said respondent and of your petitioners, in which argument counsel for your petitioners prayed that said complaint be dismissed upon said pleadings, the testimony adduced and evidence received thereunder, and finally upon the ground that neither the acts of your petitioners alleged in said complaint nor the acts [fol. v] of your petitioners as shown by said stipulation of facts, constituted any violation of Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act.

to Create a Federal Trade Commission, to Define its Powers and Duties, and for other Purposes," nor of any law or statute, the enforcement of which is entrusted to the said respondent.

14. That thereafter and on or about the 29th day of April, 1937, the said respondent Federal Trade Commission did make, file and serve upon your petitioners other findings of fact and did on or about the said last mentioned date, make, file and serve its conclusions as to the law, copy of which said findings of fact and conclusions of law, marked Exhibit "A", is hereto annexed and hereby made a part hereof.

15. That on or about said 29th day of April, 1937, said respondent did also make and file in the said proceeding against your petitioners its order to cease and desist, copy of which order, marked Exhibit "B", is hereto annexed and hereby made a part hereof.

16. That thereafter and on or about the 28th day of June, 1937, the petitioners duly moved the respondent to set aside or modify the findings as to the facts and conclusions of the respondent dated April 29, 1937, and to vacate the order to cease and desist entered herein on the same day, and to re-open the matter for further hearings upon the facts and the law, setting forth in detail in the notice of said motion the errors alleged to have been made by the respondent in said findings of fact and conclusions of law dated April 29, 1937, and the order to cease and desist entered herein on the same day, and showing further grounds for further hearings [fol. vi] upon matters considered by the respondent in said proceeding. A copy of the motion papers upon said motion will appear in the transcript of record in said proceeding to be filed herein by the said respondent.

17. That thereafter and on or about the 14th day of August, 1937, said respondent did make and file in the said proceeding against your petitioners its order denying the said motion of your petitioners. A copy of said order will appear in the transcript of record in said proceeding to be filed herein by respondent.

18. That respondent's said order to cease and desist is erroneous, unauthorized and insufficient in law and ought to be reviewed and set aside because (1) the findings of respondent upon which its said order is based are not sup-

ported by testimony or by the said stipulation of facts and (2) its said order is unauthorized and unsupported by law. More specifically, but without thereby limiting the generality of the foregoing:

(a) Respondent erred in its finding in "Paragraph Four" of said findings of fact and conclusions of law marked Exhibit "A" that "All of said respondents (petitioners herein) hereinbefore named, other than the said Guild, form a substantial majority of the originators of the leading styles of high-grade millinery for women", in that said finding is not supported by any of the evidence admitted at the hearing before the Trial Examiner or by the stipulation of facts.

(b) Respondent erred in its finding in "Paragraph Four" of said findings of fact and conclusions of law marked Exhibit "B" that "designs prepared in this way" (by professional design specialists) "are considered in said industry original creations, even though they may not be [fol. vii] novel in the sense that nothing like them has ever existed before", in that said finding is not supported by any of the evidence admitted at the hearing before the Trial Examiner or by the stipulation of facts.

(c) Respondent erred in its finding, in "Paragraph Nine" of said findings of fact and conclusions of law, marked Exhibit "A", that the acts of the petitioners unduly hindered and now hinder competition and created and now create a monopoly in the sale of women's hats in interstate commerce, in the manner set forth therein or in any other manner, in that said finding is not supported by any of the testimony or by the said stipulation of facts.

(d) Respondent erred in its findings of fact and conclusions of law by failing to make the following findings:

(1) That the unauthorized copying by one manufacturer of a style originated by another (generally referred to as style piracy) is an unfair trade practice.

(2) That the piracy of styles is detrimental to the millinery industry.

(3) That the millinery industry, particularly that portion in which the petitioners are engaged (i. e., the designing and manufacturing of high class ladies' hats) was and now is in a demoralized condition due to the piracy of style.

(4) That the piracy of style is not beneficial to the public interest and does not enable the public to secure high class hats at lower prices.

[fol. viii] (5) That the Plan and Agreement adopted by the petitioners for the elimination of style piracy was a reasonable one.

(6) That the voluntary coöperation of the petitioners in adopting the Plan to eliminate style piracy from the millinery industry was a proper and legal action within the principles laid down by the United States District Court for the District of Massachusetts in *Filene v. Fashion Originators Guild*, 14 Fed. Supp. 353 and by the Circuit Court of Appeals for the First Circuit in affirming the District Court. (*Filene v. Fashion Originators Guild*, 90 Fed. 2nd, 556.)

19. That respondent erred in its denial of petitioners' motion to modify respondent's said findings of fact and conclusions of law and to vacate said order to cease and desist and to reopen the matter for further hearings. That said error is particularly apparent in view of the facts and the offer to produce additional evidence as to the chaotic state of the trade set forth in the motion papers of Millinery Stabilization Commission upon a similar and concurrent motion, by it as amicus curiae, to modify the findings, vacate the order and reopen the matter for further hearings. The said motion of Millinery Stabilization Commission was denied by respondent on or about the 14th day of August, 1937, and the motion papers and order denying said motion will appear in said transcript of record in said proceeding to be filed herein by said respondent.

20. That respondent erred in its denial of said motion by Millinery Stabilization Commission to vacate said findings, modify said order and reopen said proceeding for further hearings.

[fol. ix] Wherefore, petitioners pray that a certified copy of this petition be served forthwith by the Clerk of this Court upon the said Federal Trade Commission, to the end that said Commission may be required in conformity with Statute, to certify and file in this Court a transcript of the entire record in the proceeding as aforesaid, wherein said order of April 29, 1937, was entered, including, but without

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limiting the generality of the foregoing the complaint, the answer, all the testimony taken, the stipulation as to the facts, the findings and report of the Trial Examiner, the exceptions to said findings, the findings as to the facts and conclusion and order of the Commission and the motion papers and orders upon said motions hereinabove referred to, and that upon review of said order to cease and desist, in and by this Honorable Court, the said order to cease and desist of the Federal Trade Commission be set aside.

Dated: November 17, 1937.

Millinery Creator's Guild, Inc., et al., Petitioners.
By Lowell M. Birrell, Attorney.

[fol. x] *Duly sworn to by Lowell M. Birrell. Jurat omitted in printing.*

[fol. xi] EXHIBIT "A" TO PETITION FOR REVIEW

United States of America

Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 29th day of April, A. D. 1937.

Commissioners: William A. Ayres, Chairman; Garland S. Ferguson, Jr., Charles H. March, Ewin L. Davis, Robert E. Freer.

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., et al.

FINDINGS AS TO THE FACTS AND CONCLUSION

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 21st day of May, 1936, issued and served its complaint in this proceeding upon respondents Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company; G. Howard Hodge; Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Sherman Hat Company;

Oriole Hat Company; John Trinner, Inc., Vibo Company, [fol. xii] Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpé, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., Henri Bendel, Inc., Peggy Hoyt, Inc., La Mode Chez Tappe, corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline, Harry Solomons and May F. Solomons, co-partners trading as Harry Solomons and Sons, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of said complaint were introduced by Astor Hogg, Attorney for the Commission before John W. Norwood, an Examiner of the Commission theretofore duly designated by it and in opposition to the allegations of the Complaint by Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Straus, Reich & Boyer, attorneys for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint, and in opposition thereto, and the oral argument of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

[fol. xiii]

FINDINGS AS TO THE FACTS

Paragraph One: Respondent, Millinery Quality Guild, Inc., hereinafter referred to as the "Guild" is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 711 Fifth Avenue, in the City of New York in said State. Said Guild is now, and for more than three years last past has been, under the domination and control of respondent hat manufacturers hereinafter referred to as "member" respondents, representatives of said member respondents acting as directors of said Guild. Since the month of July, 1934, said Guild has held itself out

to the public to be a membership corporation with a membership composed of all of the concerns hereinafter named as "member" respondents. Said Guild has been used by all of the said "member" respondents as an instrumentality for the carrying out of the plan, purpose and agreement relative to the prevention of style piracy hereinafter described. The said "member" respondents are:

Cooper-Russell, Inc., a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

Farrington and Evans, Inc., a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.;

Dave Herstein Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

G. Howard Hodge, a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.

[fol. xiv] Edgar J. Lorie, Inc., a corporation with its principal place of business at 711 Fifth Ave., New York, N. Y.;

L. G. Meyerson, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Scherman Hat Company, a corporation, with its principal place of business at 5 East 37th Street, New York, N. Y.;

Sergin F. Victor, an individual trading under the name and style of "Serge", with his principal place of business at 15 West 39th Street, New York, N. Y.;

Harry Solomons and May F. Solomons, co-partners trading under the name and style of Harry Solomons and Son, with their principal place of business at 711 Fifth Avenue, New York, N. Y.;

Oriole Hat Company, a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

John Trinner, Inc., a corporation, doing business under the name and style of "Trinner Hats", with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Vibo Company, Inc., a corporation, with its principal place of business at 1 West 39th Street, New York, N. Y.;

Vogue Hat Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Simon Millinery Company, a corporation, existing under the laws of the State of California, with its principal place of business at 989 Market Street, San Francisco, California.

[fol. xv] Paragraph Two: Respondent corporations and individuals hereinafter named and described in this para-

graph and hereafter referred to as "affiliate" respondents are:

Lilly Dache, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Gladys and Belle, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Hatnegie Hats, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Jay-Thorpe, Inc., a corporation, with its principal place of business at 24 West 57th Street, New York, N. Y.;

John-Frederics, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.;

Minnie Kramer, Inc., a corporation, with its principal place of business at 501 Madison Ave., New York, N. Y.;

Nicole de Paris, Inc., a corporation, with its principal place of business at 7 East 55th Street, New York, N. Y.;

Florence Reichman, Inc., a corporation, with its principal place of business at 16 East 52nd Street, New York, N. Y.;

Pauline Kahn, an individual trading under the name and style of Madam Pauline with her principal place of business at 6 East 53rd Street, New York, N. Y.;

Marion Valle, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.

[fol. xvi] Paragraph Three: All of said respondents mentioned in Paragraphs One and Two hereof, except the Guild, are engaged in designing and manufacturing women's hats at their respective factories located in the States of New York and California in the United States and in the sale of said women's hats to retail dealers located in the several States of the United States other than the States of manufacture. Said respondents cause said women's hats, when sold, to be transported in interstate commerce from their respective places of manufacture to the purchasers thereof located in practically every state in the Union, and in so doing there is a constant current of trade and commerce maintained by said respondents. In the carrying on of their said respective businesses said respondents are engaged in substantial competition with each other, except as to the understandings and agreements hereinafter set forth, and with other corporations, individuals, firms and partnerships likewise engaged in the distribution, sale and

transportation of similar products in commerce between and among the various states of the United States.

Paragraph Four: All of the said respondents hereinbefore named other than the said Guild form a substantial majority of the originators of the leading styles of high grade millinery for women. In general the hats manufactured and sold by said respondents are sold at wholesale for a price of about \$8.00 per hat, but some of the "member" respondents manufacture hats to sell at wholesale at a lower price. Some manufacturers of women's hats, including said respondents, originate their own designs for the hats they make. Some manufacturers do not originate their own designs but copy the designs of other manufacturers. The copying of other manufacturers' designs is commonly known in the industry as style piracy. Manufacturers who originate their own designs are known in the industry as original creators. Many of the said respondents maintain designing departments and employ designers or stylists who are constantly engaged in the origination of new styles of hats for women. Many of such designers visit Paris, France to observe the prevailing French styles and fashions and to determine the style trends. After making such observation and determining the style trends, said designers devise, for their respective manufacturers, design adaptations which are used by said respondents in making their respective hats. Designs prepared in this way are considered in said industry original creations, even though they may not be novel in the sense that nothing like them has ever existed before.

The style element is one of the most important factors in the sale of women's hats. The respondents herein are among the recognized leaders in the field of women's hats so far as style and design are concerned. The leading styles of hats, such as are sold and distributed by said respondents, are in great demand by the purchasing public throughout the United States. The high grade retail dealers in women's hats, both in New York and elsewhere in the United States, in order to offer a full line of women's hats are normally required to procure at least some of their models from the said respondents.

Paragraph Five: In the year 1934 the said "member" respondents acting directly and in cooperation with each

other and acting through the Guild, entered upon and carried out a plan or purpose to prevent insofar as possible [fol. xviii] piracy of the style and design of women's hats manufactured and sold by said respondents. In order to more completely effectuate and accomplish said purpose the said "member" respondents sought and secured the cooperation of the "affiliate" respondents. In carrying out and enforcing their said plan and purpose to eliminate piracy of design and style of women's hats said "member" respondents procured from said "affiliate" respondents an agreement wherein and whereby each and all of said "affiliate" respondents agreed to work in unison and cooperation with said Guild and its said "member" respondents in making effective the rulings of said Guild regarding style piracy, and an agreement that on and after July 16, 1934, they would make no sales to and would show no merchandise to any retail store which had failed to sign a certain agreement entitled a "Declaration of Cooperation" promulgated by said Guild and hereinafter fully set out.

Paragraph Six: To facilitate the operation of said plan and purpose a Registration Bureau was established by said Guild cooperating with "member" respondents under the supervision of its officers and employees wherein the creators of original designs and styles might register their models. Once the model is accepted by the Registration Bureau it is the usual practice of said respondents to regard such model as an original design and style of the person registering same, and any imitation or copying thereof in the ordinary course of business is treated by said respondents as design piracy. However, in the case of any alleged design piracy such filing and registration is not deemed conclusive but the matter is determined by a committee consisting of a representative of one or more of the [fol. xix] "member" respondents or by the officers and employees of the said Guild.

The said "member" respondents and "affiliate" respondents in order to make their said plan and purpose effective solicited and secured from approximately 1600 high grade retail dealers in women's hats located in various States of the United States the agreement hereinbefore referred to as the "Declaration of Cooperation", which is set forth in full as follows:

Declaration of Cooperation

Between ——— and The Millinery Quality Guild, Inc. in their effort to stamp out style piracy in the millinery industry.

Millinery Quality Guild, Inc., 452 Fifth Avenue, New York, N. Y.

GENTLEMEN:

We wish to express our desire to cooperate with the members of your organization who have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights in styles created by your members, and will refuse to countenance so-called "Style Piracy". Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We will instruct all of our buyers in Millinery that we will not buy any copies of pirated styles created by members of your association; that we will explain to them the great [fol. xx] damage which the spreading of this practice is doing to our business and ask their complete cooperation.

Furthermore, we will stamp all of our millinery orders with the following clause:

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of The Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

We welcome this opportunity to put ourselves on record to lend you our fullest cooperation for we know it will lessen the confusion in our business and add to the profits.

Very truly yours, ———, Store's name, by ———
———, Store's address.

In soliciting and securing said agreements the said respondents, acting by and through the said Guild, employed a regular series of circular letters and followup literature designed to induce and coerce retailers to sign the "Declaration of Cooperation". In aid by the circular letters sent out to the various retail stores throughout the United States, such retail stores were advised that the membership of the

Guild comprised practically every important creative firm in the millinery industry and that only those stores which [fol. xxi] had subscribed to the "Declaration of Cooperation" can inspect or purchase the women's hats of respondents.

Paragraph Seven: From and after the date when the "affiliated" member respondents entered into the said agreement with the said "member" respondents, they and said "member" respondents, by mutual understanding, agreement, combination and concert of action made it a condition precedent to the sale of their products to retail dealers throughout the United States that such retailers must be signatories to the "Declaration of Cooperation", and must agree to be bound by and act in accordance with the principles of prevention of style piracy announced in the said "Declaration of Cooperation". Respondents other than the Guild, publicly announced that they would refuse to sell, and in certain cases did refuse to sell their products to retail dealers in stylish millinery who had failed or refused to sign the "Declaration of Cooperation" or who had failed to cooperate in the plan and agreement for the elimination of style piracy.

In and by the foregoing plan and agreement said respondents have attempted to compel and still are attempting to compel and have compelled retail dealers who are desirous of selling hats manufactured by said respondents to make it a condition precedent to the purchase of women's hats from millinery manufacturers that the order for same be placed only upon the seller's warranty that the hats purchased are not copies of styles originated by respondents, and that in case the warranty fails then the merchandise may be returned. Pursuant to this method the said respondents have, in certain cases, brought about the return of women's hats by retail stores to manufacturers from whom [fol. xxii] they had purchased the same when such goods were declared by the respondent Guild to be copies originated by certain of respondents.

Pursuant to said plan, purpose and agreement said respondents agreed among themselves to expel from their membership, and to deprive of the benefits of their system of registration, and their system of style protection generally, any member or affiliate member of the Guild who solicits the business of or sells products to a retailer who has failed or refused to sign the said "Declaration of Co-

operation". In one instance the respondents did expel Milgrim Hats, Inc., a corporation engaged in the manufacture and sale of women's hats in interstate commerce from their membership upon determination by the respondents that Milgrim Hats, Inc., was not abiding by the terms of said agreement, and notified the retail outlets and the public in general that they had expelled said concern from their membership.

Paragraph Eight: The respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe, all of New York City, are not shown to have participated in the acts complained of and no finding is made against them.

Paragraph Nine: The capacity, tendency, and result of the said purpose plan and agreement hereinbefore set forth, and the acts and practices performed thereunder by the respondents, as hereinbefore set forth, have been and now are unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce:

(a) By limiting manufacturers of stylish hats for women [fol. xxiii] as to the outlets of their products and by limiting retail dealers as to their source of supply;

(b) By depriving the public of the benefits of normal price competition among retailers of stylish hats for women, and

(c) By preventing the retailers of stylish hats for women from purchasing their requirements of said products in interstate commerce from manufacturers except subject to the limitation and restriction of this plan and agreement as herein before set forth, and

(d) By increasing the price of stylish hats for women to retailers and consumers through the protection of profits resulting from respondents' activities to eliminate from the trade alleged copies of styles which they claim and adjudge themselves to have originated;

(e) By placing in the hands of respondents control of the business practices of the manufacturers of stylish hats for women to the extent of limiting and as far as possible, eliminating the retail outlet for copied styles of manufacturers who copy the styles originated by the respondents;

(f) By eliminating from sale in interstate commerce women's hats which are copies of styles and designs claimed:

to have been originated by respondents or others and registered with the Millinery Quality Guild, Inc.; and

(2) By limiting interstate commerce in high class women's hats to models originated and designed by the [fol. xxiv] manufacturer thereof or to copies produced by permission of the alleged originators thereof.

Conclusion

The practices of the respondents as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, are to the injury and prejudice of the public and respondents' competitors and retailers of women's hats, and constitute unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

W. A. Ayres, Chairman, by the Commission: —
(Seal.)

Dated this 29th day of April, A. D. 1937.

Attest: Otis B. Johnson, Secretary.

[fol. xxv] EXHIBIT "B" TO PETITION FOR REVIEW

UNITED STATES OF AMERICA, BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 29th day of April, A. D. 1937.

Commissioners: William A. Ayres, Chairman; Garland S. Ferguson, Jr., Charles H. March, Ewin L. Davis, Robert E. Freer.

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., et al.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken

before John W. Norwood, an Examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument by Astor Hogg, Counsel for the Commission; and by Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Strauss, Reich & Boyer, Counsel for the respondents, and the Commission having made its findings as to the facts, and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, [fol. xxvi] 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It Is Ordered that the respondents, Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company; G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Oriole Hat Company; John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline; Harry Solomons and May F. Solomons, copartners trading as Harry Solomons and Sons, their respective officers, representatives, agents and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties in this proceeding, cease and desist from following a common course of action pursuant to a mutual understanding, plan, or agreement for the purpose or with the effect, directly or indirectly, of lessening competition in interstate commerce in women's hats, by the following methods, or any one or more thereof, to-wit:

(1) Soliciting or securing from retail dealers in women's hats any "Declaration of Cooperation" or agreement or understanding whatsoever wherein or whereby said retail dealers undertake or agree to refrain from purchasing, or to refuse to purchase from manufacturers, women's hats [fol. xxvii] that are copies of designs originated and manufactured by respondents, or women's hats alleged by any of the respondents to be such copies; or wherein or whereby

said dealers undertake or agree to stamp their orders for women's hats with a statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.

(2) Failing or refusing to sell their products to retail dealers on the ground or for the reason that such retail dealers purchase or have purchased from manufacturers women's hats that are alleged by respondents to be copies of women's hats originated and manufactured by respondents.

(3) Failing or refusing to sell their products to retail dealers who fail or refuse to stamp their orders for women's hats purchased from manufacturers, with the statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.

(4) Expelling from the membership of said Millinery Quality Guild, Inc., any member or affiliate member on the ground or for the reason that such member or affiliate member solicited the sale of, or sold women's hats to a retailer who failed to sign the agreement set forth in Paragraph (1) [fols. xxviii-xxix] hereof, or failed or refused to cooperate in the methods therein set forth.

(5) Utilizing any cooperative means among themselves or with retail dealers to accomplish or carry out the methods prohibited in Paragraphs (1), (2) and (3) hereof.

It Is Further Ordered that respondents shall within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It Is Further Ordered that the complaint as against respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe be dismissed on the ground that the allegations of the complaint are not sustained as to them.

By the Commission.

Otis B. Johnson, Secretary. (Seal.)

[fol. xxx] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT, OCTOBER TERM, 1937

No. 15688.

MILLINERY CREATOR'S GUILD, INC., et al., Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

On Petition to Review Order of the Federal Trade
Commission.

CROSS PETITION BY FEDERAL TRADE COMMISSION—Filed
March 10, 1938

Comes now the Respondent, Federal Trade Commission,
by its attorneys, and shows to the Court:

(1) That heretofore, to wit, November 19, 1937, the Petitioners, Millinery Creator's Guild, Inc., et al., filed their petition, praying this Honorable Court to review and set aside an order issued by Respondent, Federal Trade Commission, on the 29th day of April 1937, requiring Petitioners to cease and desist from certain practices found by said Federal Trade Commission to be unfair methods of com-[fol. xxxi] petition within the meaning of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 717, 15 U. S. C., Sec. 45). A copy of said order to cease and desist, issued by Respondent, Federal Trade Commission, is set forth in the transcript of record hereinafter referred to.

(2) That said order to cease and desist was duly served on Petitioners on, to wit, April 30, 1937, as required by law, since which time said order has been and is in full force and effect.

(3) That Respondent, Federal Trade Commission, in accordance with the provisions of said Act of Congress, has certified and filed in this Court a transcript of the entire record of the proceedings in the case lately pending before said Federal Trade Commission, and in which said order to cease and desist was entered.

(4) That said proceeding before Respondent, Federal Trade Commission; including the complaint, findings as to the facts and conclusion, and order to cease and desist, was had in compliance with and in due conformity to the provisions of the aforesaid Act of Congress, and is valid in law. Said proceeding is set forth fully in the aforesaid transcript of record.

(5) That the findings as to the facts, upon which said order to cease and desist is based, are supported by the [fol. xxxii] testimony and other evidence taken in the proceeding duly had as required by law, as fully appears from the aforesaid transcript of record.

(6) That said order to cease and desist conforms to the complaint issued in said proceeding and to the Commission's findings, and is valid in law.

(7) That the Petitioners, Millinery Creator's Guild, et al., Inc., have failed and neglected to obey said order to cease and desist.

Wherefore, this Respondent, Federal Trade Commission, prays: That this Honorable Court make and enter, upon the pleadings, testimony and proceedings set forth in said transcript of record, its decree for the affirmance and enforcement of the Commission's order to cease and desist.

W. T. Kelley, Chief Counsel, Federal Trade Commission; Martin A. Morrison, Assistant Chief Counsel; James W. Nichol, Special Attorney, Attorneys for the Respondents.

[fol. xxxiii] *Duly sworn to by Otis B. Johnson. Jurat omitted in printing.*

[fol. 1] BEFORE FEDERAL TRADE COMMISSION

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., et al.

CERTIFICATE

I, Otis B. Johnson, secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before

the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings and Testimony.

Part 2—Exhibits.

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated April 29, 1937, entered by the Federal Trade Commission in that proceeding.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 23rd day of February, A. D., 1938.

(Signed) Otis B. Johnson, Secretary. (Seal.)

[fol. 2] BEFORE FEDERAL TRADE COMMISSION

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., a Corporation, and Its Members as Herein Set Forth, and UPTOWN CREATORS' GUILD, an Unincorporated Association, and Its Members as Herein Set Forth

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Millinery Quality Guild, Inc., and its members, and Uptown Creators' Guild and its members, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph One. Respondent, Millinery Quality Guild, Inc., is a membership corporation organized, existing and [fol. 3] doing business under the laws of the State of New York, with its principal office and place of business located

at 711 Fifth Avenue, in the City of New York, in said State. Its membership consists of corporations, individuals, firms and partnerships, as hereinafter described, all of whom are engaged in designing and manufacturing ladies' hats at factories located in the State of New York and elsewhere in the United States and especially reproductions of hats originally designed, manufactured and sold by French milliners, and in the sale of said ladies' hats to retail dealers located in States other than the States of manufacture, causing said ladies' hats, when sold, to be transported from their respective places of manufacture to the purchasers thereof. There has been and now is a constant current of trade and commerce in said products between the members of said Millinery Quality Guild, Inc., and retailers in said hats located throughout the several States of the United States. In the course and conduct of their business, the members of said Millinery Quality Guild, Inc., were, prior to the organization of said Guild in competition with each other and were at all times herein referred to in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution of similar products in commerce as hereinabove set out. The membership of said Millinery Quality Guild, Inc., is and has been as follows:

Cooper-Russell, Inc., a corporation existing under the laws of the State of New York, with its principal place of [fol. 4] business located at 15 West 39th Street, City of New York, in said State;

Farrington and Evans, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Dave Herstein Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

G. Howard Hodge, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Edgar J. Lorie, Inc., a corporation existing under the laws of the State of New York, with its principal place of

business located at 711 Fifth Avenue, City of New York, in said State;

L. G. Meyerson, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Scherman Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 5 East 37th Street, City of New York, in said State;

Sergin F. Victor, an individual trading under the name and style of "Serge," with his principal place of business [fol. 5] located at 15 West 39th Street, City of New York, in said State;

Harry Solomons and May F. Solomons, co-partners trading under the name and style of Harry Solomons and Son, with their principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Oriole Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 15 West 39th Street, City of New York, in said State;

John Trinner, Inc., a corporation existing under the laws of the State of New York and doing business under the name and style of "Trinner Hats," with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Vibo Company, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 1 West 39th Street, City of New York, in said State;

Vogue Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Simon Millinery Company, a corporation existing under the laws of the State of —, with its principal place of business located at 989 Market Street, in the City of San Francisco, in the State of California.

[fol. 6] Paragraph Two: Respondent, Uptown Creators' Guild, is a voluntary unincorporated association of corporations, individuals, firms and partnerships engaged in designing, manufacturing, selling and distributing millinery,

including ladies' hats, to retail dealers located in States other than the State of manufacture, causing said ladies' hats, when sold, to be transported from the respective places of manufacture in the State of New York or State of manufacture to the purchasers thereof located in the various States of the United States. There has been and now is a constant current of trade and commerce in said ladies' hats between the members of said unincorporated association and retail dealers in said hats. In the course and conduct of their respective businesses, the members of said Uptown Creators' Guild were, prior to the time when they began to co-operate with Millinery Quality Guild, Inc., as hereinafter set out, in competition with each other and were at all times herein referred to in competition with corporations, individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The membership of said Uptown Creators' Guild at the time hereinafter referred to was as follows:

Henri Bendel, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 10 West 57th Street, City of New York, in said State;

Lilly Dache, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, City of New York, in said State;

Gladys and Belle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, City of New York, in said State;

Hatnegie Hats, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, City of New York, in said State;

Peggy Hoyt, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 55th Street, City of New York, in said State;

Jay-Thorpe, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 24 West 57th Street, City of New York, in said State;

John-Frederics, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, City of New York, in said State;

Minnie Kramer, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, City of New York, in said State;

La Mode Chez Tappe, Inc., a corporation existing under the laws of the State of New York, with its principal place [fol. 8] of business located at 19 West 57th Street, City of New York, in said State;

Nicole de Paris, Inc., a corporation existing under the laws of the State of New York, with its principal place of business at 7 East 55th Street, City of New York, in said State;

Florence Reichman, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 52nd Street, City of New York, in said State;

Pauline Kahn, an individual trading under the name and style of Mme. Pauline, with her principal place of business located at 6 East 53rd Street, City of New York, in said State;

Marion Valle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, City of New York, in said State.

Paragraph Three: The respondent corporations, individuals, firms and partnerships, hereinabove mentioned, who made up and constitute the Millinery Quality Guild, Inc., and Uptown Creators' Guild are originators of the leading styles of the highest class ladies' hats and are manufacturers and sellers of the highest class ladies' hats. No member of either Guild originates or manufactures hats to sell at wholesale at less than \$8.00 per hat. Said members of both said Guilds maintain designing departments and employ [fol. 9] highly paid designers who are constantly engaged in the origination of new styles of hats. Such designers at intervals journey to Paris, France, to observe the trend of styles and to secure original French models, from which they later devise various adaptations which are called and known as "originations." The style element is the

outstanding factor in the sale of ladies' hats and the late style hats, such as are sold and distributed by the members of both Guilds, are in great demand by the purchasing public throughout the United States. The respondent member of said Guilds are the recognized leaders in the field of ladies' hats so far as style and design are concerned and a majority of the high grade retail dealers and outlets are required to procure at least some of their models from the manufacturers in one or both of said Guilds in order to offer a full line of ladies' hats.

Paragraph Four: The professed purpose of the organization of Millinery Quality Guild, Inc., was to prevent piracy of style and design of ladies' hats sold and distributed by members of the Millinery Quality Guild, Inc., as hereinabove set out. Acting in pursuance of such professed purpose, said Millinery Quality Guild, Inc., and its members have adopted and still have in effect the following methods and practices:

(a) The establishment and operation of a department in the Millinery Quality Guild, Inc. known as "Registration Bureau," wherein members of the Millinery Quality Guild, [fol. 10] Inc., and no others, had and have the right and privilege of filing and registering the original model or models designed by them. By and through the understanding of the members of the Millinery Quality Guild, Inc., it is mutually agreed by all the members of said Millinery Quality Guild, Inc., that the acceptance of any of its members' models or designs for registration constituted and constitutes a conclusive determination by the Millinery Quality Guild, Inc., that such design or designs was or were original designs and thereafter any imitation or copying thereof is to be considered and treated as design piracy. It is further agreed and understood between the members of the Millinery Quality Guild, Inc., that when registration of any design is granted to any member of said Guild, the hat and design are the particular property of the member which had registered them.

(b) Said Millinery Quality Guild, Inc., and its members further solicited and secured from a large number of retail customers in the various States of the United States an agreement styled "Declaration of Cooperation" between such retail dealers and the Millinery Quality Guild, Inc.,

said agreement being incorporated herein and made a part hereof by reference.

(c) Sought and secured the co-operation of the unincorporated group styling themselves the Uptown Creators' Guild in carrying out and enforcing the purpose of its organization, and in that behalf secured the signature of the constituent members of said Uptown Creators' Guild to a certain agreement:

[fol. 11] "The firms whose signatures are attached hereto have agreed to unite in a circle under a caption of their own choosing. This organization to work in unison with the members of the Millinery Quality Guild on the questions of Style Piracy and the effort to eliminate unfair advertising. The agreement being that the members of this affiliated group will work in unison with the Millinery Quality Guild in making effective the rulings regarding style piracy and unfair advertising. They will display the same sign in their show rooms, stating that on and after July 16 (1934) no sales will be made and no merchandise will be shown to any store who has failed to sign our agreement regarding Style Piracy which is as follows:

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by members of the Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.'"

Paragraph Five: The constituent members of said Millinery Quality Guild, Inc., for more than three years last past, and the constituent members of the unincorporated association styling themselves the Uptown Creator's Guild, from and after the date of signature by them of the agreement hereinabove set forth, by combination, agreement and [fol. 12] concert of action, made it a condition precedent of the sale of their products to retailers that such retailers must have signed the "Declaration of Cooperation," hereinabove referred to; and by agreement, combination and concerted action, have refused to sell their products to any retailer or retailers who have failed or refused to enlist in the plan and sign the "Declaration of Cooperation." In and by the agreement signed by the retailers of ladies' hats, designated "Declaration of Cooperation," the members of

both of said Guilds have coerced and compelled, and now coerce and compel, retail dealers who are desirous of selling such stylish hats as are only produced by the members of said Guilds to refuse to purchase said ladies' hats from manufacturers who have copied hats adjudged and reported by said Guilds to have been designed by said members of said Guilds and to otherwise co-operate with said Guilders in removing from the market hats of manufacturers who are not co-operating with said Guilds in their style protective program set forth herein, under penalty of being black-listed and boycotted by members of the said Guilds. In and by such agreement styled the "Declaration of Cooperation," retailers are coerced and compelled to agree to recognize the property rights in styles created by Guild members and to refrain from purchasing copies of pirated styles created by the members of that association, and to stamp each millinery order made by them with the reading matter shown in paragraph two of the agreement hereinabove set out, and in such a manner as to notify the seller that the [fol. 13] order is placed only upon the manufacturer's warranty that the hats so ordered are not copies of styles originated by members of the Millinery Quality Guild, Inc., and the members of the Uptown Creators' Guild. Said Millinery Quality Guild, Inc., claims the right, and by common understanding and agreement of its members and the members of the Uptown Creators' Guild has the right, to expel from its membership and to deprive of the benefit of the protection of its system of registration, and its system of style protection generally, any member of the Millinery Quality Guild, Inc., or Uptown Creators' Guild who solicits the business of or sells its products to a retailer who fails or refuses to sign its "Declaration of Cooperation," and it has so expelled one of the constituent members of the Uptown Creators' Guild for the cause stated, and advertised the fact of such expulsion in periodicals, having an interstate circulation, and by circular letters of notification addressed to approximately 1600 retailers in various States of the United States who had signed the "Declaration of Cooperation" and who were cooperating with the plan of the Millinery Quality Guild, Inc.

Paragraph Six: The capacity, tendency, purpose and result of the combination, conspiracy and agreement, and the

acts and practices performed thereunder, by said respondents and the retail dealers hereinabove described, have been and now are to unduly and unreasonably restrain commerce by limiting manufacturers of stylish hats as to the outlets of their products and retail dealers as to the [fol: 14] sources of supply; to deprive the public of the benefits of normal price competition among retailers of stylish hats by restraining said retailers, under threat of boycott, who desire to purchase the products of the members of the Millinery Quality Guild, Inc., and the Uptown Creators' Guild from making any purchases unless such retailers sign and enter into the Guilds' agreements; to prevent retailers in stylish millinery from freely purchasing their requirements of said products in interstate commerce from the manufacturers thereof; to substantially increase the price of such hats to the retailers and to the consuming public; to place in the hands of the Millinery Quality Guild, Inc., control over the business practices of the manufacturers of stylish hats for women and the power to exclude from this industry those who do not conform to the rules and regulations established by said Guild and thus to unduly and unreasonably restrain interstate trade and commerce in stylish millinery and to tend to create a monopoly in the said Millinery Quality Guild, Inc., its members and those cooperating with it.

Paragraph Seven: The foregoing alleged acts and practices of respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

[fol. 15] Wherefore, the Premises Considered, the Federal Trade Commission on this 21st day of May, A. D., 1936, now issues this its complaint against said respondents.

Notice

Notice is hereby given you, Millinery Quality Guild, Inc., and its members, and Uptown Creators' Guild and its

members, respondents herein, that the 26th day of June, A. D., 1936, at 2:00 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed, and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule V) provide as follows:

(a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. [fol. 16] Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

(c) Failure of the respondent to file answer within the time above provided and failure to appear at the fixed time and place of hearing shall be deemed to authorize the Commission, without further hearing or notice to respondent, to proceed in regular course on the charges set forth in the complaint, and make, enter, issue, and serve upon respondent findings of fact and an order to cease and desist.

(d) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent admits all the material allegations of the complaint to be true. Any such answer shall be deemed to waive a hearing thereon, and to authorize the Commission

without trial and without further evidence, or other intervening procedure, to make, enter, issue and serve upon respondent:

(1) In cases arising under Section 5 of the Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers [fols. 17-21] and duties, and for other purposes" (the Federal Trade Commission Act),

* * * * *

findings of fact and an order to cease and desist from the violations of law charged in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this its complaint to be signed by its Secretary, and its official seal to be hereto affixed at Washington, D. C., this 21st day of May, A. D., 1936.

By the Commission.

(Seal)

Otis B. Johnson, Secretary

[fol. 22] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ANSWER OF MILLINERY QUALITY GUILD, INC., ET AL.—Filed
July 1, 1936

The respondents, Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company, G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Sergin F. Victor, Harry Solomons and May F. Solomons, Oriole Hat Company, John Trinner, Inc., Vogue Hat Company and Simon Millinery Company, answering the complaint herein:

First: Admit so much of the allegations of Paragraph "One" of the complaint as alleges that the Millinery Quality Guild, Inc., is a corporation duly organized and existing under the laws of the State of New York, with its principal [fol. 23] office and place of business located at No. 711 Fifth Ave., New York City, N. Y.; except as so admitted, deny

each and every allegation in said Paragraph "One" contained.

Second: Upon information and belief, deny each and every allegation in Paragraph "Two" of said complaint contained.

Third: Admit so much of the allegations in Paragraph "Three" of said complaint contained as allege- that the corporations, individuals, firms and partnerships are originators, manufacturers and sellers of ladies' hats; maintain designing departments and employ designers who visit Paris and are among the recognized leaders in the field of ladies' hats so far as style and design are concerned; except as so admitted, deny upon information and belief, each and every allegation in said Paragraph "Three" of said complaint contained.

Fourth: Admit so much of the allegations contained in Paragraph "Four" of said complaint as allege- that the Millinery Quality Guild, Inc., solicited and secured from a large number of retail stores throughout the United States their signature to a certain "Declaration of Cooperation"; that the Millinery Quality Guild, Inc., secured the signature of the following to the statement set out in quotations in subparagraph (c) of said Paragraph "Four";

Lilly Daché, Inc., by: Lilly Daché. Jay Thorpe, Inc., [fol. 24] by: H. N. Anster. Bergdorf Goodman, by Andrew Goodman, Vice President. Nicole de Paris, Inc., by: Juliette Nicole. Gladys and Belle Inc., by: Belle Gossert. Minnie Kramer, by: Mr. Kramer. Hatnegie Hats, Inc., by: Robert S. Walker. John Frederics, Inc., by: Frederic Hirsch. Milgrim Hats, Inc., by: William Rosenblum. Florence Reichman, Inc., by Arthur E. Reichman, Treasurer. Marcia Davidson, by: Marcia Davidson.

that the Millinery Quality Guild, Inc., established and operated a Registration Bureau for the filing and registering of original hat designs; except as so admitted, deny upon information and belief, each and every allegation in Paragraph "Four" of said complaint contained.

Fifth: Deny upon information and belief, each and every allegation in Paragraphs "Five," "Six" and "Seven" of [fols. 25-28] said complaint contained.

Wherefore, said respondents respectfully pray that the complaint herein be dismissed.

New York, N. Y., June, 30th, 1936.

(Signed) Lowell M. Birrell, Esq., Attorney for: Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company, G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Sergin F. Victor, Harry Solomons and May F. Solomons, Oriole Hat Company, John Trinner, Inc., Vogue Hat Company and Simon Millinery Company, Office & P. O. Address, 27 Cedar Street, Borough of Manhattan, City of New York.

[fol. 26] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ANSWER OF GLADYS AND BELLE, INC., ET AL.—Filed
July 1, 1936

The respondents Gladys and Belle, Inc., Hatnogie Hats, Inc., Jay Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Pauline Kahn and Marion Valle, Inc., answering the complaint herein:

First: Deny any knowledge or information sufficient to form a belief as to the allegations in Paragraph "One" of the complaint contained.

Second: Upon information and belief, deny each and every allegation in Paragraph "Two" of said complaint contained.

Third: Admit so much of the allegations in Paragraph "Three" of said complaint contained as allege that the [fol. 30] corporations, individuals, firms and partnerships are originators, manufacturers and sellers of ladies' hats; maintain designing departments and employ designers who visit Paris and are among the recognized leaders in the field of ladies' hats so far as style and design are concerned; except as so admitted, deny upon information and belief,

each and every allegation in said Paragraph "Three" of said complaint contained.

Fourth: Admit so much of the allegations contained in Paragraph "Four" of said complaint as allege that the Millinery Quality Guild, Inc., solicited and secured from a large number of retail stores throughout the United States their signature to a certain "Declaration of Cooperation"; that the Millinery Quality Guild, Inc., secured the signature of the following to the statement set out in quotations in subparagraph (c) of said Paragraph "Four":

Bergdorf Goodman, by: Andrew Goodman, Vice.
 Pres. Nicole de Paris, Inc., by: Juliette Nicole,
 Gladys and Belle, Inc., by: Bell Gossert. Jay
 Thorpe, Inc., by: H. N. Auster. Minnie Kramer,
 by: M. Kramer. Hatnegie Hats, Inc., by: Robert
 S. Walker. John Frederics, Inc., by: Frederic
 Hirsch. Milgrim Hats, Inc., by: William Rosen-
 [fols. 31-36] blum. Florence Reichman, by: Ar-
 thur E. Reichman, Treas. Marcia Davidson, by:
 Marcia Davidson.

that the Millinery Quality Guild, Inc., established and operated a Registration Bureau for the filing and registering of original hat designs; except as so admitted, deny upon information and belief, each and every allegation in Paragraph "Four" of said complaint contained.

Fifth: Deny upon information and belief, each and every allegation in Paragraphs "Five," "Six" and "Seven" of said complaint contained.

Wherefore, said respondents respectfully pray that the complaint herein be dismissed.

New York, N. Y., July 14, 1936.

(Sgd.) Lowell M. Birrell, Esq., Attorney for: Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Pauline Kahn and Marion Valle, Inc., Office & P. O. Address, 27 Cedar Street, Borough of Manhattan, City of New York.

[fol. 37] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER APPOINTING EXAMINER—Filed August 3, 1936

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41).

It is Ordered, that John W. Norwood, an examiner of this Commission, be and he hereby is designated and ap-
[fols. 38-46] pointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is Further Ordered, that the taking of testimony in this proceeding begin on Tuesday, August 18, 1936, at nine o'clock in the forenoon of that day (eastern standard time), at room 500, 45 Broadway, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission:

— — —, Otis B. Johnson, Secretary. (Seal.)

* * * * *
[fols. 47-61] Findings as to the Facts and Conclusion.
Omitted. See Exhibit "A," printed side page. XI ante.

* * * * *
[fols. 62-65] Order to Cease and Desist. Omitted. See Exhibit "B," printed side page. XXV ante.

[fol. 66] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

MOTION TO MODIFY FINDINGS AS TO THE FACTS AND CONCLUSION AND TO VACATE ORDER TO CEASE AND DESIST.

The respondents hereinafter named by Lowell M. Birrell, their attorney, in the interest of justice, move under Sec-

tion 5 of the Federal Trade Commission Act to set aside or modify the Findings as to the Facts and Conclusion herein dated April 29, 1937, and the Order to Cease and Desist entered herein on the same day, and to reopen the matter for further hearings upon the facts and the law and the grounds for said motion by the respondents are:

1. That in the Findings as to the Facts there appeared two findings not included in the trial examiner's report nor supported by any evidence submitted at the hearing before the trial examiner, namely, in paragraph "Four" thereof as follows:

"All of the said respondents hereinbefore named other than the said Guild form a substantial majority of the original [fol. 67] inators of the leading styles of high grade millinery for women."

And at the end of the same paragraph the finding that:

"Designs prepared in this way are considered in said industry original creations even though they may not be novel in the sense that nothing like them has ever existed before."

2. The Findings as to the Facts set forth in paragraph "Nine" thereof are unsupported by any evidence before the Commission and vary in substantial respects from the report of the trial examiner and the stipulation of facts in the case.

Subparagraph "(a)" in its present form indicates a limitation of production and a limitation of purchases. No evidence was taken or submitted as to the amount of production before or after the adoption of the plan for elimination of style piracy. The fact is that production by the respondents has been increased rather than decreased and that the retail sales have been increased rather than decreased.

Subparagraph "(b)" in its present form indicates that there is a limitation upon the normal price competition among retailers of stylish hats by virtue of respondents' activities. No such finding is warranted by the evidence before the Commission as there is nothing in the stipula-

tion of facts or the report of the examiner, nor was any [fol. 68] evidence taken as to the effect upon retail competition or retail prices of the activities of the respondents.

Subparagraph "(d)" in its present form indicates that as a result of the activities of the respondents the price of stylish hats for women has been increased both to the retailers and consumers. That was not admitted by the stipulation on behalf of the respondents and there is no evidence before the Commission upon which any such finding can be based. In order to lay the basis for such finding it will be necessary to take detailed evidence as to the actual facts.

Subparagraph "(f)" in its present form indicates that the activities of the respondents did tend to eliminate from sale styles and designs claimed to have been originated by respondents or others and registered with the Millinery Quality Guild, Inc. While both the stipulation of facts and the examiner's report restrict such elimination to hats which are copies of styles and designs originated by respondents or others, etc.

Subparagraph "(g)" in its present form indicates similarly that there is an attempt to limit interstate commerce to models or copies produced by permission of the alleged originators, while both the stipulation of facts and the examiner's report are to the effect that the restriction is limited to those produced by permission of the originators thereof.

3. That contrary to the Conclusion, the practices of the respondents are not to the injury and prejudice of the public [fol. 69] and respondents' competitors and retailers of women's hats, nor do they constitute unfair methods of competition in interstate commerce in violation of the provisions of the Act of Congress approved September 25, 1914. Since the Order to Cease and Desist was entered herein the United States Circuit Court of Appeals for the First Circuit, in an opinion rendered June 1, 1937, in the case of William Filene's Sons Company v. Fashion Originators' Guild of America, Inc., has specifically approved concerted action in an industry for the elimination of style piracy. The respondents should be permitted to prove, as is the fact, that there was a reasonable adequate market outside of their group for any retailer or consumer.

4. That such a state of demoralization existed in the millinery industry in which the respondents are engaged as to make it not only reasonable but necessary for respondents to adopt the methods forbidden by the Order to Cease and Desist. The Millinery Stabilization Committee, an organization known to the Federal Trade Commission and representative of the entire millinery industry, has been engaged in the collection of statistics as to this state of demoralization and has offered to co-operate with the respondents in submitting such statistical information to the Federal Trade Commission in support of the respondents' position as to the necessity for the elimination of style piracy in the industry.

[fol. 70] 5. The Findings as to the Facts while not specifically to that effect, indicate some criticism of the method of determination by the respondents of the originality of the various designs or styles registered with the respondents' registration bureau. There is no evidence before the Commission and the trial examiner's report does not indicate that there was ever any criticism of the determination by the respondents of the originality of any style. The respondents desire the opportunity to submit to the Commission a revised method of determination of the originality of designs by independent arbitrators.

6. That the piracy of style and the unauthorized copying of original designs are a serious menace to many industries in this country and particularly those in the general category of wearing apparel; that it is generally recognized and conceded that the piracy of styles and designs is not in the public interest; that it is an unfair and immoral trade practice and that its elimination will help stabilize many industries and particularly the millinery business. In the interests of such industries the Commission should have before it complete evidence as to its effect before condemning it in this case, thus establishing a dangerous precedent.

The respondents further move that their time within which to file a report with the Federal Trade Commission setting forth the manner and form in which they have complied with the Order to Cease and Desist be extended until a

[fol. 71] reasonable time after the determination of this motion.

Lowell M. Birrell, Attorney for respondents herein other than Peggy Hoyt, Inc., Henri Bendel, Inc., La Mode Chez Tappe and Lilly Daché, Inc., No. 27 Cedar Street, New York, N. Y.

June 28, 1937.

BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER DENYING MOTION TO MODIFY FINDINGS, ETC.—Filed August 14, 1937

This matter coming on to be heard by the Commission upon the motion filed herein on June 29, 1937, by counsel [fol. 72] for all respondents other than Peggy Hoyt, Inc.; Henri Bendel, Inc.; La Mode Chez Tappe and Lilly Daché, Inc., to modify the findings as to the facts and conclusion and to vacate the order to cease and desist issued in this case on April 29, 1937, and to be granted an oral argument upon said motion, and the Commission having duly considered the said motion and the record herein and being now fully advised in the premises;

It is Ordered that the motion to modify the findings as to the facts and conclusion and to vacate the order to cease and desist herein be, and the same hereby is, denied.

It is further Ordered that the request for an oral argument upon the motion to modify the findings as to the facts and conclusion and to vacate the order to cease and desist herein be, and the same hereby is, denied.

By the Commission.

Otis B. Johnson, Secretary. (Seal.)

[fol. 73] BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., a Corporation, and its Members as Herein Set Forth, and
UPTOWN CREATORS' GUILD, an Unincorporated Association,
and Its Members as Herein Set Forth.

Statement of Evidence

Room 823, 45 Broadway,
New York, New York,
August 18, 1936.

Met, pursuant to notice, 9 a. m.
Before John W. Norwood, Trial Examiner.

APPEARANCES:

Astor Hogg, Esq., appearing for the Federal Trade Commission.

Strauss, Reich and Boyer, Esqrs. (141 Broadway, New York, New York), by M. J. Spitzer, Esq., appearing for Henri Bendel, Inc., a respondent.

[fol. 74] Sanford Jarett, Esq., (302 Broadway, New York, New York); appearing for La Mode Chez Tappe, Inc., a respondent.

Maurice M. Cohn, Esq. (122 East 42nd Street, New York, New York), appearing for Peggy Hoyt, Inc., a respondent.

Lowell M. Birrell, Esq. (27 Cedar Street, New York, New York), appearing for Millinery Quality Guild, Inc., all individual respondents named in the complaint as belonging to that organization, Uptown Creators' Guild, and all individual respondents named in the complaint as belonging to that organization, except those represented by counsel above.

COLLOQUY

Examiner Norwood: The hearing will now come to order. Pursuant to the order of the Federal Trade Commission issued to me on the 3d day of August, 1936, the hearing of this case is now convened in room 823, 45 Broadway, New York, New York, the hearing now being removed by consent

and due notice from room 500 to this address, and the hearing being convened at nine o'clock a. m. eastern standard time this the 18th day of August, 1936.

Mr. Astor Hogg appears for the Federal Trade Commission in support of the complaint.

Mr. Lowell M. Birrell, 27 Cedar Street, New York, New York, appears for the Millinery Quality Guild and all of the individual respondents named in the complaint as belonging to that organization and also for the Uptown Creators' [fol. 75] Guild and all of the individual respondents named in the complaint as belonging to that organization except Henri Bendel Inc., Lilly Daché, Inc., and Peggy Hoyt, Inc., and La Mode Chez Tappe.

Mr. M. J. Spitzer, of the firm of Strauss, Reich, and Boyer, 141 Broadway, New York, New York, appears for the individual respondent Henri Bendel, Inc.

Mr. Maurice M. Cohn, 122 East 42d Street, New York, New York, appears for Peggy Hoyt, Inc.

Mr. Sanford Jarett, 302 Broadway, New York, New York, appears for La Mode Chez Tappe, Inc.

The various answers which are filed in this case practically amount to a general denial of the complaint and the contentions of the parties will be clarified as they proceed, so we will go ahead with the testimony, unless counsel has any statement to make as to the issues.

Mr. Spitzer: On behalf of my client, Henri Bendel, Inc., which is named as a member of the Uptown Creators' Guild, with the consent of counsel for the Federal Trade Commission I should like to put on our evidence at the outset, to show that we are not and never have been a member of or in any way associated with either or both of these guilds, so that I may thereupon move thereafter for a dismissal of the complaint as against our client. I would like to do that and, if Mr. Hogg will permit, I would like to put a representative of Henri Bendel, Inc., on the stand, to give his testimony on behalf of this respondent, and then withdraw from the hearing.

Mr. Cohn: My answer specifically alleges that we never [fol. 76] were a part of the Uptown Creators' Guild. I also would like to have my client testify at the beginning so that I will be in a position to make a similar motion.

My answer specifically alleges the fact that we were never a member. We never signed any application blank, we never paid any dues, we never participated in the thing, we

never cooperated with any of the members of the Uptown Creators' Guild.

I have my client here and ready to testify now.

Mr. Jarett: On behalf of the respondent La Mode Ghez Tappe, Inc., I would like to make a similar application, similar in every respect to that made by these two counsel. However, my respondent's witness is not here at the present time, but if we be given opportunity at a subsequent hearing to adduce some evidence and testimony that we never were a member of either organization, I think it would help considerably.

Examiner Norwood: Does the entire charge hinge upon the membership in these organizations?

Mr. Hogg: Yes, in a way that is true. Not entirely, probably.

Examiner Norwood: If they are separate organizations, but cooperated in any way in this, then the evidence will be put in against them just the same as if they were members, if there is any such evidence, because I do not know about that, as you see.

Mr. Spitzer: The testimony which I desire to adduce goes not only with reference to the membership but to the prac-[fol. 77] tices referred to, as it is our contention that we never participated in any activities of the Guild or performed any of the acts referred to in the complaint. We are ready to offer that testimony whenever permitted to do so.

Examiner Norwood: Is that procedure agreeable to counsel for the complainant?

Mr. Hogg: I should like to consider it for a few moments.

Examiner Norwood: And to counsel for the Guild?

Mr. Birrell: That is entirely agreeable, and I would like to state, for the purposes of the record, that whereas it was recited that I appeared for the Uptown Creators' Guild, it is my opinion, from a rather thorough investigation of the facts, that there is no such unincorporated association, in other words, that there is no such thing as the Uptown Creators' Guild, and, therefore, in no sense do I appear for it, but I do appear for the respondents that are named.

It also might be an appropriate time, before the hearing convenes, to suggest, not only for the purpose of saving time and expense, but also because I think it is a very definite way in which this hearing may be shortened that this hearing be adjourned, pending the termination of the pres-

ent hearing in connection with the complaint of the Federal Trade Commission against the Fashion Originators' Guild of America, Inc.

The reason for that is that the Fashion Originators' Guild of America, Inc., has engaged in practices substantially the same as those which have been engaged in by the respondents in this case and the questions of law that will be raised in that case and this case, I believe, are practically identical.

[fol. 78]. There are, in the complaint of the Federal Trade Commission in this proceeding, demonstrably incorrect allegations.

However, there are certain material allegations in this complaint that can, if they are worded in a different manner, be admitted. Therefore it seems to me that it would be expedient to attempt, and I believe I can do it with Mr. Hogg, if that is agreeable; I believe we can arrive at a statement of facts on which, on behalf of those people whom I represent, I am willing to concede, and it is further to be stipulated on those facts we are willing not only to admit them for the purposes of this complaint but to be bound upon the determination of the legal questions in the case of the Federal Trade Commission against the Fashion Originators' Guild of America.

One of the pertinent reasons why I say that is that this declaration of cooperation which is recited in the complaint and the system of style registration was meant to be and was copied almost identically from the declaration of cooperation and the style-registration system set up by the Fashion Originators' Guild and I feel that in view of the fact that this is the season for the respondents here in the manufacture of millinery when they are extremely busy and also because the really material facts are not in dispute that such a motion should be entertained and an adjournment given for at least a reasonable time, within which I can certainly use every effort to secure consents to an admission of what I believe are the only material facts in this complaint.

Examiner Norwood: Such a motion can be made by counsel to the Commission at any time, but they evidently took [fol. 79] the view that this testimony should be taken in this case now. They probably considered that.

The only thing for me, as I see it, is to go ahead and take testimony here this week. There probably will be an ad-

jourment over until a further time, either for the respondents to prepare evidence or otherwise, but, in the meantime, you can get up the motion and request a hearing on it, and renew your motion before the Commission that this case be suspended for the time being and if they decide to do that, why, of course, we will follow the instructions of the Commission.

We shall go now, with the agreement of counsel, to the matter in regard to the participation of each particular respondent in this case. As I understand it, they want to introduce evidence in that regard.

Off the record.

(There was a discussion off the record.)

Examiner Norwood: Proceed on the record.

Mr. Hogg: I do prefer that the case proceed in the regular way. I shall object to putting in any testimony until I close the case for the Commission.

I am ready to proceed now for the Commission.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Examiner Norwood: Back on the record.

For good cause shown, counsel for these particular respondents will be allowed to put in their testimony now, bearing on their contention that they have nothing whatever to do with these respondent organizations or associations, or the matters and things alleged in the complaint.

[fols. 80-97] Mr. Spitzer: Before introducing or calling my witness, I would like to correct one statement made by Mr. Birrell. He referred to acts performed by the respondent as being similar, but I would like the record to show definitely that with reference to respondent Henri Bendel, Inc., he did not refer to respondent Henri Bendel, Inc..

Mr. Birrell: That is quite correct.

Mr. Cohn: May I also have the same statement on the record as to my client, Peggy Hoyt, Inc.?

Examiner Norwood: Yes.

Mr. Jarrett: May I have the same statement on the record as to my client, La Mode Chez Tappe, Inc.?

Examiner Norwood: Yes.

Call your witness.

[fol. 98] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

Room 823, 45 Broadway,
New York, New York,
August 19, 1936.

Met, pursuant to adjournment, 12 m.
Before John W. Norwood, Trial Examiner.

APPEARANCES:

Astor Hogg, Esq., appearing for the Federal Trade Commission.

Lowell M. Birrell, Esq., (27 Cedar Street, New York, New York), appearing for Millinery Quality Guild, Inc., all individual respondents named in the complaint as belonging to that organization, Uptown Creators' Guild, and all individual respondents named in the complaint as belonging to that organization, except those represented by counsel shown on page 1.

[fol. 99]

COLLOQUY

Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday the hearing is now convened at 12 o'clock noon, eastern standard time, in room 823, at 45 Broadway, New York, New York. Mr. Astor Hogg appears for the Federal Trade Commission and Mr. Lowell M. Birrell appears for respondents, as stated in the record on yesterday.

You may proceed.

Mr. Birrell: Your Honor, might I say that since the adjournment on yesterday Mr. Hogg and I have conferred with respect to the various exhibits which he wished to introduce on behalf of the Commission.

We checked the exhibits and found them to be correct copies, and we have no objection to their introduction in evidence as true and correct copies of the documents which they purport to be.

In this same connection, and during the course of our checking these exhibits, Mr. Hogg and I have discussed at considerable length the material facts involved in this complaint. It is my opinion, after talking with Mr. Hogg, that it will be possible for me to stipulate with him as to all of

the substantial facts of all of the material allegations of the complaint. I therefore respectfully request an adjournment of these hearings so as to afford me an opportunity to draft a proposed stipulation of the facts and submit such stipulation to Mr. Hogg so that he can, if he feels it advisable, submit it to the Commission.

Because of the rather complicated state of facts and [fol. 100] because of certain obvious inaccurate characterizations of the respondents in the complaint, it will take some time to draft this stipulation. If I may have until Friday morning in which to submit a tentative stipulation I believe it will obviate the necessity for a great deal of testimony and eliminate considerable trouble and expense in bringing out the facts in this case.

Examiner Norwood: Do you join in that request, Mr. Hogg.

Mr. Hogg: Mr. Examiner, yes, and no, Judge, but I rather feel it is moving for an indefinite adjournment in view of what he says. He says he is willing to admit the substantial allegations of the complaint, and stipulate to them. It seems out of the ordinary for us to meet back here Friday since I cannot be here next week, and I would rather have just an indefinite adjournment.

Examiner Norwood: You have to be here Friday morning any way on another case?

Mr. Hogg: Yes, sir.

Examiner Norwood: As I understand Mr. Birrell's proposition it is, if given this time he will submit to you in the meantime a tentative stipulation of the facts to see whether or not they are acceptable to you and to the Chief Counsel.

Can you pass judgment on that by Friday morning and be able to say, on Friday morning, whether or not you wish to go on with the case or whether or not you wish to join with him in a request for an indefinite postponement pending the compilation of this stipulation and its acceptance?

Now, in case you wish to go on with the case and submit further testimony, why, you can start your witnesses on Saturday. Furthermore, if you have business that takes [fol. 101] you to Washington, we can adjourn then to a time definite in New York and come back and commence the case.

So, in view of the fact that there is an opportunity of making this agreement which will cut out maybe thousands of pages of record, why, I think it is worthwhile and also be-

cause I have to be here Friday anyway, why, I am willing to grant the adjournment.

If you prefer to go on with it now, why, I would be guided entirely by your wishes in the matter.

(There was a discussion off the record.)

Examiner Norwood: In accordance with the request of counsel for the Commission and counsel for the respondents this hearing is now adjourned to reconvene in this room on Friday at 10 o'clock a. m. eastern standard time, August 21, 1936.

(Whereupon, at 12:10 p. m., August 19, 1936, the hearing in the above-entitled matter was adjourned.)

[fol. 102] BEFORE FEDERAL TRADE COMMISSION

[Title omitted]

Room 823, 45 Broadway,
New York, New York,
August 21, 1936.

Met, pursuant to adjournment, 10 a. m.
Before John W. Norwood, Trial Examiner.

APPEARANCES: -

Astor Hogg, Esq., appearing for the Federal Trade Commission.

Lowell M. Birrell, Esq. (27 Cedar Street, New York, New York), appearing for Millinery Quality Guild, Inc., all individual respondents named in the complaint as belonging to that organization, Uptown/Creators' Guild, and all individual respondents named in the complaint as belonging to that organization, except those represented by counsel as shown on page 1.

[fol. 103] COLLOQUY

Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on August 19, the hearing in this case is now reconvened at 10 o'clock a. m. eastern standard time, in room 823, of the Federal Trade Commission's office at 45 Broadway, New York City, New York.

Mr. Astor Hogg appears for the complaining Commission and Mr. Birrell appears for certain of the respondents, as stated in the record.

You may proceed, gentlemen.

Mr. Birrell: Mr. Hyland is on his way down here now.

Mr. Hogg: If the Examiner please, I might stipulate some of these exhibits to go in, and then I can ask Mr. Hyland on the issue, if this will be all right.

Examiner Norwood: You might present those exhibits you agree on to him, and they can be marked in order to save time.

Mr. Hogg: I offer this paper in evidence, your Honor. It is entitled "Declaration of Cooperation Between — and the Millinery Quality Guild, Inc., in their effort to stamp out style piracy in the millinery industry."

Examiner Norwood: Yes. And that is to be admitted by stipulation and agreement of counsel?

Mr. Birrell: It is conceded that this is a correct copy of the so-called declaration of cooperation.

Examiner Norwood: This paper is received as Commission's Exhibit No. 1.

[fol. 104] (The document referred to was marked "Commission's Exhibit 1" and received in evidence.)

Examiner Norwood: We will now declare a recess.

(There was a short recess.)

RUTH WEINTRAUB, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hogg:

Q. Will you kindly give your full name?

A. My name is Ruth Weintraub.

Q. And your address, Miss Weintraub, is what?

A. 222 West 83d Street, New York City.

Q. And what is your business?

A. I am secretary of the Millinery Creators Guild.

Q. And do you know Mr. J. M. Hyland?

A. Yes, I do.

Q. And what particular position does he hold with the Millinery Guild?

A. He is the executive secretary.

Q. Now, you said the Millinery Creators Guild. Do you have any connection with the Millinery Quality Guild?

A. Well, the Millinery Creators' Guild is just a new name for the Millinery Quality Guild.

Q. And when did you take on this new name for the Millinery Creators' Guild?

A. Quite some months ago.

Q. About how many months?

A. Oh, about six or seven months ago. I don't remember exactly.

[fol. 105] Q. Was the Millinery Quality Guild a corporation?

A. I imagine it was.

Q. Are you sure about it? If you are not, we will try to elicit that from Mr. Hyland. Are you sure whether or not it was a corporation?

A. I think it was.

Q. Well, at any rate, have you, in the past, taken part in the activities of the Millinery Quality Guild?

A. Yes, during the time I have been employed there.

Q. I hand you these papers to get you to tell us whether or not you recognize them, or if you ever saw them before.

A. (Examining papers.)

Mr. Birrell: May I look at them, please, before you answer the question?

The Witness: Certainly (handing papers).

Mr. Hogg: Yes. All right.

By Mr. Hogg:

Q. Do you recognize these?

A. All but one of them.

Q. Which one don't you recognize?

A. This one (indicating).

Q. Do you remember having a talk with Mr. Babcock? I will just try to refresh your memory.

A. In reference to what?

Q. Mr. Babcock was an examiner of the Commission in reference to this case?

A. Well, the only talk I had was by showing Mr. Bab-

cock any correspondence that he wanted in the office. I did not discuss this thing with him.

Q. Did you give him any minutes of the meetings that you kept?

A. I think I did; I don't remember.

[fol. 106] Q. Are these the ones you gave him?

A. (Examining papers.) Yes, they are.

Q. Is this a correct copy of what you gave him?

A. That is right.

Q. And you at that time were connected with this respondent?

A. Yes, sir.

Q. Now known as the Millinery Creators' Guild?

A. Yes.

Mr. Birrell: Incorporated.

By Mr. Hogg:

Q. All right; Incorporated. This date, for instance, on this first paper—

Mr. Hogg: I better offer it. I offer this in evidence.

Mr. Birrell: Well, won't you offer them one at a time, so that I can make my objections?

Mr. Hogg: Yes, I will.

I will offer this sheet I hold in my hand, purporting to be a minute of a meeting of the members of the Millinery Quality Guild, held on Tuesday, April 2, at 711 Fifth Avenue, at 6:30 p. m. I offer that in evidence.

Examiner Norwood: Submit it to counsel.

Mr. Birrell: I object to this being received in evidence as an examination of it discloses that it has no relation whatever to any of the allegations in the complaint. I submit it to the Trial Examiner with that objection.

[fol. 107] Examiner Norwood: Well, the whole theory of the complainant's case—

Mr. Birrell (Interposing): There is nothing in there that deals even remotely, as I see it, with the allegations in the complaint. If Mr. Hogg can point out any relationship, I will be glad to withdraw my objection.

Examiner Norwood: For what purpose do you offer it?

Mr. Hogg: If your Honor please, I really think it throws some light here on this concerted action, if there is a concerted action.

Mr. Birrell: In what respect, Mr. Hogg, may I ask? Because these minutes refer——

Examiner Norwood (Interposing): It is received as Commission's Exhibit No. 2. If it has no bearing on the case, it will be disregarded.

Mr. Birrell: Exception; and I make further objection that the date is incomplete, in that it is only April the 2d, and it does not show what year. I think that can be supplied, but, if it is accepted in evidence, I should like permission to attach the date and year to that. Is that agreeable to you?

(The document referred to was marked "Commission's Exhibit 2" and received in evidence.)

By Mr. Hogg:

Q. Now, this particular minute that I have just offered in evidence, which is dated April 2d, do you happen to know what year that was in?

A. Yes, in the year 1935.
[fol. 108] Q. April 2, 1935, there was a Millinery Quality Guild, Incorporated; is that right?

A. Yes.

Mr. Hogg: Of course, the exact corporate set up——
I take it Mr. Hyland will be more familiar with it than you are; is that right?

The Witness: I think so.

By Mr. Hogg:

Q. Now, I believe you have identified that as being a copy of the minutes——

A. (Interposing.) I don't know anything about that. I was not employed at the Guild at the time these were taken.

Q. Did you give Mr. Babcock this copy?

A. Yes, I did.

Q. Did it appear on the record of the Guild at that time?

A. Yes, it does.

Q. I mean, of the Millinery Quality Guild.

A. Yes.

Q. I notice the date on that is early in April. Do you know and can you tell us what year that was in?

A. Yes, that was in 1934.

Mr. Hogg: I offer this in evidence, if your Honor please.

Mr. Birrell: Perhaps it would expedite matters if I might.

make a general objection which I can just repeat with respect to all these minutes?

Examine Norwood: Yes.

Mr. Birrell: I object to the introduction in evidence of these minutes of the meetings of Millinery Quality Guild, Incorporated, on the ground that they are entirely irrelevant [fol. 109] and incompetent and immaterial to the issues raised by the allegations in the complaint and the answer, and further that with respect to the various respondents mentioned therein they are self-serving declarations, and not binding on any of the respondents.

Examiner Norwood: The objection is overruled and the paper is received in evidence as Commission's Exhibit No. 3.

(The document referred to was marked "Commission's Exhibit 3" and received in evidence.)

(There was a discussion off the record.)

By Mr. Hogg:

Q. Now, then, I hand you this paper to get you to tell us whether you can identify that.

A. (Inspecting paper.) Yes, I have.

Q. Does that represent and is that an exact copy of the minutes of the Millinery Quality Guild at the time it was made?

A. Yes.

Q. And you gave that to Mr. Babcock, did you?

A. Yes, I did.

Q. And it was taken, of course, from the record?

A. Yes.

Q. And on that I notice the date of September 21st. Now, what year was that in?

A. That was in 193—

Mr. Birrell: If you don't know, you can say you don't know, and find the date later.

A. (Continuing.) I don't know the exact year it was. [fol. 110] Mr. Hogg: I offer it in evidence as Commission's exhibit.

Mr. Birrell: I wish to make the same objection as I made with respect to the other minutes.

Examiner Norwood: Yes. The same will be received as Commission's Exhibit No. 4.

(The document referred to was marked "Commission's Exhibit 4" and received in evidence.)

Examiner Norwood: We usually have an understanding in these hearings that an exception is deemed to have been taken at the proper time to every adverse ruling. Do counsel agree to that?

Mr. Hogg: That is quite right, your Honor.

Mr. Birrell: Yes, sir.

By Mr. Hogg:

Q. Now, I hand you another piece of paper, which purports to be a copy of minutes. Do you identify that?

A. (Inspecting paper.) Yes, I do.

Q. And does that represent and is that a copy of the minutes that you kept of the Millinery Quality Guild as represented on that paper?

A. That's right.

Q. And you also gave that to Mr. Babcock, I believe?

A. Yes, I did.

Q. I notice the date of October 15th as the date shown in there. What year is that, do you remember?

A. I don't remember, no.

Mr. Hogg: I offer it in evidence.

[fol. 111] Mr. Birrell: The same objection.

Examiner Norwood: The same ruling.

It will be received in evidence and marked as Commission's Exhibit No. 5.

(The document referred to was marked "Commission's Exhibit 5" and received in evidence.)

By Mr. Hogg:

Q. Now, since you have been with this organization had you kept their minutes of the meetings?

A. On each one of the subsequent meetings, yes..

Q. Well, up to the time that Mr. Babcock interviewed you, did you have any other minutes of the company at that time?

A. None other than what I gave him.

Q. In other words, you gave him all the minutes that you had?

A. That's right.

Q. At that time?

A. Yes.

Q. Now, since that time there have been other minutes made?

A. Right.

Q. And you still have them?

A. That's right.

Q. And, if the Court requests you to do so, you would bring up a copy of them, would you?

A. Yes, sir.

By Examiner Norwood:

Q. And those minutes were the records of meetings between the time of the organization and the time that it changed its name, were they not?

A. Yes, sir, they were.

Q. And what is the approximate date of the organization, and the change of name, the name of the original or [fol. 112] ganization, Millinery Quality Guild, Incorporated?

A. Well, I should judge it continued back to 1932, but I am not positive about that.

Mr. Birrell: That is correct; 1932.

Mr. Hogg: Now, if your Honor please, I believe that I will let this witness stand aside at this time. I want to see Mr. Hyland next.

(Witness excused.)

JOSEPH M. HYLAND, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hogg:

Q. Will you kindly give your full name and residence?

A. My name is Joseph M. Hyland.

Q. And where do you live, Mr. Hyland?

A. I live at 10 East 85th Street, New York City, New York.

Q. And have you a business address, Mr. Hyland?

A. Yes, I have, 711 Fifth Avenue, New York City, New York.

Q. And what is your business?

A. I am in the hat business, ladies' millinery and hat business.

Q. And are you a merchant in the hat business?

A. That's right.

Q. And what is the name of your company?

A. Hyland hats.

[fol. 113] Q. And where is its address?

A. Between 55th and 56th Streets on Fifth Avenue.

Q. And is it a retail store?

A. No, it is wholesale.

Q. And you manufacture hats?

A. Yes, sir.

Q. And as you manufacture them you sell them?

A. Yes.

Q. Well, where do you sell them? Where are your customers?

A. From coast to coast, and mostly in the larger cities.

Q. Do you ship them to your customers by railroad, and by boat, and by what other mode of transportation?

A. Any customary transportation.

Q. Are there others in New York City who manufacture hats especially and sell them throughout the United States?

Mr. Birrell: I will object to that question. I don't think Mr. Hyland's knowledge on that subject would be any better than anybody else's.

Examiner Norwood: Well, it is just as good as anybody else's, and, if he knows, I will let him answer it. The objection is overruled.

The Witness: Yes.

By Mr. Hogg:

Q. About how many? Do you know, Mr. Hyland?

A. No, I don't.

Q. But there are several, as a matter of common knowledge?

A. I would say there are many.

Q. Do you have any connection with the Millinery Quality Guild?

A. Yes, sir.

[fol. 114] Q. What connection do you have?

A. I am acting secretary.

Q. Is the Millinery Quality Guild, Incorporated, a corporation?

A. I don't know.

Q. What are your duties as secretary of the Millinery Quality Guild, Incorporated?

A. Well, they have been to act with the members in having meetings to agree upon; to show, and then to promote fashions, to give fashion shows, to do what they could in a sort of a social way, to help the business. My duties have been to help along that line.

Q. And you don't know whether or not it is a corporation?

A. No, I do not know the legal set-up at all.

Q. When did you become associated with the Millinery Quality Guild, Incorporated?

A. Say about two years ago.

Q. Now, just what are your duties with them? Your duties?

A. Well, originally I was brought into the organization to assist in getting the retail stores to cooperate with us against the pirating of styles.

Q. Just what do you do now—

Strike that.

You are a sort of a demonstration head of this Guild, are you, Mr. Hyland?

A. No, I would not think so.

Q. Well, do you have a board of directors?

A. No, not to my knowledge. Most of the work has been by committees. If we had a fashion show in the offing, they would first appoint certain men to work, to take care of the details of the fashion show. Or if we wanted to do [fol. 115] some promotion work another committee would be appointed. I don't believe there was any board of directors. I don't believe there were any officers.

Q. You don't believe there are any officers?

A. No. In other words, I mean I don't know of there ever having been a president or a vice-president. We had a man who would act as chairman of the association, and at a meeting he was empowered to select certain committeemen to work on the matter they then had before them. In fact, the set-up, as I saw it, was more of a—well, I would not

know just how to express it—sort of an organization to promote the business. People found certain questions, and they would be reported to the association, and they would discuss it.

Q. Tell me this: Do you have books of this concern, the Millinery Quality Guild, down to your place of business? Have you got books?

A. Not that I know of.

Mr. Birrell: What kind of books?

By Mr. Hogg:

Q. Any kind of books used in connection with the book-keeping functions?

A. Not that I have ever seen.

Q. Do you have anything like by-laws?

A. I have never seen them.

Q. Do you have a constitution?

A. No.

Q. You know Mr. Harry Babcock, do you, attorney-examiner of the Federal Trade Commission?

A. Yes, sir.

[fol. 116] Mr. Birrell: I don't like to object, myself, Mr. Hogg, but I think I could make a suggestion that would facilitate you in your efforts a great deal. It is one of the reasons I was trying to work up the stipulation.

If your Honor please, it is very obvious from this witness, and if you call a further witness that has been subpoenaed here you will learn much less about the facts than a stipulation will give you, because these people do not know what the situation is, and that was one of the reasons I was trying to work on it. I can supply you very quickly and easily with the facts, before you can get it from these witnesses.

Examiner Norwood: You gentlemen can work out any way in which we can get what this witness knows about the facts, or he does not know; something maybe he wants to bring out.

By Mr. Hogg:

Q. This is in evidence, Mr. Hyland, as Commission's Exhibit No. 1. Do you recognize that thing and know what it is?

A. (Inspecting paper.) Yes, sir.

Q. Well, has the Millinery Quality Guild, Incorporated, made any use of that declaration of cooperation in the last few years?

A. Yes.

Q. Now, when?

A. I would say about two years ago.

Q. And how long did you use it?

A. Well, I think it was actively promoted over a period of about six months.

[fol. 117] Q. Can you give us the date that you stopped using that paper?

A. No. I cannot.

Q. Can you give us the approximate date?

A. I would say about a year ago.

Q. Have you anything at your place of business that would indicate the date that you did quit using it?

A. Not that I know of.

Q. Do you know of any person in New York or elsewhere that has any more information about the set-up of the Millinery Quality Guild, Incorporated, than you have? Do you know of any person that, in your judgment, is more familiar with the set-up?

A. No.

Q. Where did the person that handled these declarations of cooperation get them signed, here?

A. In New York, yes.

Q. And did you attend to that work outside of New York?

A. Rarely, but once in a while.

Q. Who handled them?

A. I suppose the various members.

By Examiner Norwood:

Q. That is, exhibits No. 1 were furnished to all the members of the organization?

A. That is this paper?

Q. Yes?

A. Yes, sir.

By Mr. Hogg:

Q. Mr. Hyland, did you circularize the retail stores throughout the United States to some extent in an effort to get them to sign this declaration of cooperation?

A. Yes.

[fol. 118] Q. I think you will recognize these circulars, won't you?

A. Yes.

Q. Look at this and identify it if you can.

A. (Inspecting paper.) Yes, sir; I identify it.

Q. Well, just what is it, if you don't mind?

A. That we sent a series of advertisements as per enclosed, together with the statement—

Mr. Birrell: He has not identified it yet. He is not answering your question.

Examiner Norwood: Go right ahead.

The Witness: Do you want me to identify, your Honor, the purpose of this?

Examiner Norwood: Tell us what that paper is.

The Witness: This paper was sent with this declaration of cooperation to have the stores recognize the value of the effort we were making to protect the styles originated by one of our own members.

By Mr. Hogg:

Q. I notice that this letter has upon it, "Very truly yours, The Millinery Quality Guild, Inc.", and then the words, "Executive Secretary?"

A. Yes, sir.

Q. And who was the executive secretary at that time?

A. I am. I was.

Q. You signed these letters, then?

A. Yes, sir.

Q. And you were authorized, I take it, by the guild, to write and sign this letter at that time?

A. That is right.

Q. Now, down at the bottom of that page, I see the words, "Members," and then—underscored—and then a lot of [fol. 119] names. What is the significance of that?

A. The significance, to my mind, would be that these people were all agreeable to an effort to protect their own markets.

Q. Well, were they members of the Millinery Quality Guild?

A. Not all of them.

Q. What ones on that letter were not?

A. Would you like me just to check it up?

Q. Yes, sure, go ahead.

A. (Witness marks paper with pencil.)

Q. Now, this letter, and we are still talking about a letter dated September 27, 1934, which I am about to offer in evidence, that has some check marks on it.

A. Yes.

Q. Now, have you checked those names, and were they members of the Millinery Quality Guild?

A. As far as I know, these.

Q. Have you ever heard of the Uptown Creators' Guild?

A. Yes, sir.

Q. Were any of the names appearing on this letter, copy of letter—Were any of them members of the Uptown Creators' Guild?

Mr. Birrell: I object to that unless you show that Mr. Hyland is qualified to testify with respect to the membership of the Uptown Creators' Guild.

Examiner Norwood: I will permit the witness to testify of his own knowledge of them.

The Witness: Well, I don't know that I am qualified to answer it, your Honor. The Uptown Creators' Guild was a group entirely aside from our organization, and my recollection was that the only object that they had was to join [fol. 120] with us in trying to protect their styles. We had no other understanding. I don't know what their formation was, or their officers.

By Mr. Hogg:

Q. Were any of the people on this paper here that you have identified members of that organization, of that movement?

A. I don't know whether they were members. I know that those people had been talked to regarding this effort.

Q. They were in that movement, were they, or were they not?

A. I would say yes.

Mr. Hogg: I offer in evidence this circular letter dated September 27, 1934, that we have just been talking about, in evidence.

Mr. Birrell: I object to its being received in evidence except as a copy of a communication sent out in the manner which the witness described, and I object to its being re-

ceived in evidence so far as these check marks are concerned, with respect to the question of membership in any organization, because it is obvious that these check marks would not be binding upon any of the parties whose names are checked.

Examiner Norwood: The check marks are explained in the testimony there. The objection is overruled and the paper is received as Commission's exhibit No. 6.

(The document referred to was marked "Commission's" [fol. 121] Exhibit 6" and received in evidence.)

By Mr. Hogg:

Q. Now, what is this, please (handing a paper to the witness)?

A. (Inspecting paper.) Well, I would say it is the same effort as behind this (Indicating Commission's exhibit 6).

By Examiner Norwood:

Q. By "this" you refer to Commission's exhibit No. 6?

A. That is right.

By Mr. Hogg:

Q. That letter was sent out from New York here to various retail outfits throughout the country?

A. Yes, sir.

Q. In an effort to get them to join in signing this agreement or declaration of cooperation?

A. That is right.

Mr. Hogg: All right. I will offer that in evidence, if your Honor please. I will say that there are some check marks appearing upon the bottom of this letter, which need not be considered.

Examiner Norwood: You can erase them, if you want to.

Mr. Birrell: I have no objection to that.

Examiner Norwood: Then it is received as Commission's exhibit No. 7.

[fol. 122] (The document referred to was marked "Commission's Exhibit 7" and received in evidence.)

By Mr. Hogg:

Q. Now, what is this paper, please?

A. (Inspecting paper.) The same consideration as those (indicating).

Q. A letter that you sent out to the retail stores?

A. That is right, yes, sir.

Q. And that is your signature, I believe, on that letter, as it appears upon that letter, is it not, Mr. Hyland?

A. (Inspecting paper.) Well, it is not my own personal signature.

Q. But it is a facsimile?

A. Yes, that is right.

Mr. Hogg: Then, if your Honor please, I will offer this paper in evidence.

Mr. Birrell: To that there will be no objection.

Examiner Norwood: The paper is received in evidence as Commission's exhibit No. 8.

(The document referred to was marked "Commission's Exhibit 8" and received in evidence.)

By Mr. Hogg:

Q. (Handing paper.) And this, please?

A. (Inspecting paper.) That is the same thing. It is just a series, part of a series.

Q. Of course, those were a series that went all over the country? That type of letter?

A. Yes.

[fol. 123] Mr. Hogg: I offer this in evidence.

Mr. Birrell: To that there is no objection.

Examiner Norwood: It will be received as Commission's exhibit No. 9 in evidence.

(The document referred to was marked "Commission's Exhibit 9" and received in evidence.)

By Mr. Hogg:

Q. And this, please, Mr. Hyland (Handing paper)?

A. (Inspecting paper.) Yes; that also is a part of it.

Q. Was that a circular sent out by the Millinery Quality Guild to the retail stores located in the different States of the United States?

A. Well, I don't remember this, myself.

Q. Would you know what it is, Mr. Hyland?

A. Yes, I know what it is, but I have no direct recollection of this particular paper, this particular advertisement. I don't recall it.

Mr. Birrell: I might suggest that we find out if it went

out, and if it went out, Mr. Hyland's answer will be accordingly.

Examiner Norwood: You want to give it an identification mark?

Mr. Hogg: Yes. Mark it for identification.

(There was a discussion off the record.)

By Mr. Hogg:

Q. Is this a copy of an advertisement that appeared in this paper, "Women's Wear Daily," of July 17, 1934? [fol. 124] A. I could not say; I don't recall it.

Examiner Norwood: Do you concede, Mr. Birrell, that it is?

Mr. Birrell: I will concede that this is a copy of an advertisement which appeared in Women's Wear Daily on the date indicated.

Mr. Hogg: Then I will offer it in evidence, if your Honor please.

Examiner Norwood: Commission's exhibit 10 for identification is now received as Commission's exhibit No. 10 in evidence.

(The document referred to was marked "Commission's Exhibit 10" and received in evidence.)

By Mr. Hogg:

Q. The Women's Wear Daily is a trade paper published here in New York City?

A. Yes, sir.

Q. And does it have circulation in any other States of the United States?

A. Yes, sir.

Q. Tell me what this is, please.

A. (Inspecting paper.) Well, I would say this belongs in this same file.

Q. A copy of letter sent out to the retail stores; is that right?

A. Yes.

Q. In your effort to get them to join in this and sign the declaration of cooperation?

A. Yes, sir.

Mr. Hogg: I offer that in evidence.

[fol. 125] Examiner Norwood: It will be received in evidence as Commission's exhibit No. 11.

(The document referred to was marked "Commission's Exhibit 11" and received in evidence.)

By Mr. Hogg:

Q. Look at this one, please, and tell us about it.

A. (Inspecting paper.) It is a copy of letter sent to the retail stores.

Mr. Birrell: If your Honor please, may I have it noted on the record that in making no objection to the introduction of these in evidence I am not in any sense to be considered as admitting that the evidence, the substance of the letters, is true or correct, but only that it was a communication which was sent out.

Examiner Norwood: Yes, I think that may be properly placed on the record.

(The document referred to was marked "Commission's Exhibit 12" and received in evidence.)

By Mr. Hogg:

Q. And this, please.

A. (Inspecting paper.) The same thing applies to that.

Q. The same thing?

A. Yes, sir.

Mr. Hogg: I offer this in evidence, if your Honor please. [fol. 126] Examiner Norwood: It will be received as Commission's exhibit 13.

(The document referred to was marked "Commission's Exhibit 13" and received in evidence.)

By Mr. Hogg:

Q. Tell us what those two sheets are, please.

A. (Inspecting paper.) That is to the retail stores.

Mr. Hogg: I would like to attach these two papers together, as they are really one letter, and offer it as Commission's exhibits 14-A and 14-B.

Examiner Norwood: They will be received in evidence as Commission's exhibits 14-A and 14-B.

(The documents referred to were marked "Commission's Exhibits 14-A and 14-B" and received in evidence.)

By Mr. Hogg:

Q. All right. What is this, please?

A. (Inspecting paper.) The same thing.

Mr. Hogg: Well, I will offer that in evidence also, your Honor.

Examiner Norwood: The paper is received in evidence as Commission's exhibits Nos. 15-A and 15-B, consisting of two pieces.

[fol. 127] (The documents referred to were marked "Commission's Exhibits 15-A and 15-B" and received in evidence.)

(There was a discussion off the record.)

By Mr. Hogg:

Q. Now, did you circularize the retail stores throughout the country in any other manner, or contact them in any other manner, in an effort to get them to sign this declaration of cooperation?

A. Well, I presume you would say it was an effort at contact if a buyer came in a showroom and they were asked to sign this declaration of cooperation?

Q. Tell us how many retail stores in the country these declarations of cooperation were in effect with, or, rather, in use with.

A. I don't know.

By Examiner Norwood:

Q. Can you approximate it?

A. Well, I would say there were several hundred.

By Mr. Hogg:

Q. Is this a list, Mr. Hyland, of the retail stores?

A. (Inspecting papers.) It looks like it.

Q. Do you concede it is?

Mr. Hogg: This is what we identified together.

Mr. Birrell: I will concede that this is substantially correct, [fol. 128] and we checked that over. This list is correct. I will concede that this is substantially correct.

(There was a discussion off the record.)

Mr. Hogg: I will offer in evidence these sheets of paper furnished here, and conceded to be a list of the retail stores throughout the United States that have signed the declaration of cooperation.

Examiner Norwood: Yes. This list, which is admitted by agreement of counsel, consisting of pages numbered consecutively from 81 to 135, inclusive, are received in evidence as Commission's exhibit No. 16.

(The document referred to, a number of blue-ruled sheets of paper bound together by a brass paper-fastener, was marked "Commission's Exhibit 16" and received in evidence.)

By Mr. Hogg:

Q. Are you familiar with the term "resident buyers" as used in connection with this industry?

A. Yes, sir.

Q. Are resident buyers here in New York?

A. Yes, sir.

Q. As I understand it, if you will pardon my leading, a resident buyer is one who is either on the ground and buys women's hats for retail stores that may be situated even in California; is that right?

A. Yes.

Q. I suppose whether or not the resident buyers signed these declarations of cooperation?

A. I would say no.

[fol. 129] Q. But, to the best of your judgment, this is a complete list of the stores that have signed this declaration of cooperation?

A. Yes.

Q. Did you have some correspondence with some Chicago people, particularly the Consolidated Millinery Company, with respect to the Millinery Quality Guild?

A. Yes.

Q. I have a list of letters here that I want you to look at, and maybe we will save a little time by just going through them and seeing if you can identify them. Copies of letters, I should have said.

A. (Inspecting papers.)

By Examiner Norwood:

Q. Are those—

Examiner Norwood: Those are letters that counsel for respondents is willing to admit?

Mr. Birrell: We have checked those, along with the others.

Examiner Norwood: Those are all from the files of the Millinery Quality Guild, Incorporated?

Mr. Birrell: Yes.

Mr. Hogg: I offer them in evidence.

Mr. Birrell: I may have the same objection to some of them, unless the present alleged effort is limited to cover some of them, for I don't think they are binding on the respondents. Some of them, I think, were not sent out in the capacity of Mr. Hyland as secretary of the guild.

Examiner Norwood: Can you segregate the ones that you have no objection to?

[fol. 130]. Mr. Birrell: I can do that, I believe. The result of this, your Honor, is that counsel for the Commission is going to a certain extent to get the benefit of the stipulation, without giving me the benefit of it.

Examiner Norwood: The Commission will probably give you the benefit of it.

Mr. Birrell: I hope so.

(There was a discussion off the record.)

Mr. Birrell: I believe, Mr. Hogg, in your question to Mr. Hyland you referred only to the Consolidated Millinery Company. You have some letters here other than those.

Mr. Hogg: Yes; I know I have.

Mr. Birrell: Do you want to include all of these?

Mr. Hogg: All of that group that we checked together.

(There was a discussion off the record.)

Mr. Birrell: I think that you had better offer these one at a time, because I cannot make my objections clear without—

Examiner Norwood: Go ahead.

By Mr. Hogg:

Q. Can you identify this letter that I am handing you?

A. (Inspecting paper.) Yes, I can.

Q. What is that, please?

A. I would say it classifies with these other communications.

[fol. 131] By Examiner Norwood:

Q. That is a carbon copy from your files?

A. Yes, sir.

By Mr. Hogg:

Q. Mendel is connected with Mendel Brothers; is that right?

A. Yes.

Q. And you at that time were attempting to get him to come in and sign the declaration of cooperation?

A. Yes.

Q. And you, of course, were working for the Millinery Quality Guild, Incorporated?

A. Yes.

Q. And you signed that letter yourself?

A. Yes, sir.

Q. Is it a true letter and had these names on the bottom of it?

A. Yes, sir.

Mr. Hogg: I offer it in evidence.

Mr. Birrell: I have no objection to it.

Examiner Norwood: It will be received and marked in evidence as Commission's exhibit No. 17.

(The document referred to was marked "Commission's Exhibit 17" and received in evidence.)

By Mr. Hogg:

Q. What is this, please?

A. (Inspecting paper.) The same thing.

Mr. Hogg: I will offer it in evidence.

[fol. 132] Examiner Norwood: It will be received and marked in evidence as Commission's exhibit No. 18.

(The document referred to was marked "Commission's Exhibit 18" and received in evidence.)

By Mr. Hogg:

Q. What is this, please?

A. (Inspecting paper.) It is the same thing.

Mr. Hogg: I will offer it in evidence—

By Mr. Hogg:

Q. In other words, that is a copy of a letter that you, as executive secretary, sent, or, rather, it is a copy of a telegram that you, as executive secretary, sent, to the Millinery Quality Guild; isn't that so, sent to Mr. John Weinberg, of the Consolidated Millinery Company, 18 South Michigan Avenue, Chicago, Illinois?

A. Right.

Mr. Hogg: I offer it in evidence.

Mr. Birrell: No objection.

(The document referred to was marked "Commission's Exhibit 19" and received in evidence.)

By Mr. Hogg:

Q. What about this one, now, please?

A. (Inspecting paper.) This is a communication that I received.

[fol. 133] Q. From John Weinberg?

A. That's right.

Q. And that is a true copy of letter that you received from John Weinberg?

A. Yes.

Mr. Hogg: I offer it in evidence.

Mr. Birrell: No objection.

Examiner Norwood: It will be received and marked in evidence as Commission's exhibit No. 20.

(The document referred to was marked "Commission's Exhibit 20" and received in evidence.)

By Mr. Hogg:

Q. What is this I am handing you now please?

A. (Inspecting paper.) Well, this is the end of the subject, but it is really a personal letter.

Q. Do you object to its going into evidence, Mr. Hyland? If it is too personal, I will not put it in, but I would like to get it in if it is not too personal (Handing paper to Mr. Birrell).

Mr. Birrell: That is definitely just a personal letter to Mr. Weinberg and, while it does mention the subject, it goes back to an old-time friendship. I will object to its

introduction in evidence in its entirety. There are portions of it that I would be willing to have go in evidence. That is a further indication of the difficulty of trying to work this thing out.

Examiner Norwood: Mr. Hogg says he will not insist on that, so you may proceed to the next one.

[fol. 134] Mr. Hogg: I will reserve it and study it a bit myself, and not offer it now.

(There was a discussion off the record.)

Examiner Norwood: Go ahead and put in whatever you have agreed upon now, without any further ado about it.

(There was a discussion off the record.)

Mr. Birrell: I am agreeable that this letter go in.

Mr. Hogg: All these may be offered in evidence, and then I will look them through in due course.

Examiner Norwood: Three carbon copies of letters which are admitted by agreement between counsel, one dated September 8, 1934, which is received as Commission's exhibit No. 21; one dated September 27, 1934, which is received as Commission's exhibit No. 22; one dated October 5, 1934, which is received as Commission's exhibit No. 23.

(The documents referred to were marked "Commission's Exhibits 21, 22, 23," respectively, and received in evidence.)

By Mr. Hogg:

Q. Commission's exhibits Nos. 21, 22, and 23 are copies of correspondence that passed between counsel of the Milinery Quality Guild and Mandel Brothers of Chicago; is that right?

A. Yes, sir.

Q. Do you recognize this as a photostatic copy?

[fol. 135] A. (Inspecting paper.) Yes, sir.

Q. Did you have anything to do with getting it up?

A. Yes, sir.

Q. Just what did you do?

A. In getting up this particular paper?

Q. Yes.

A. We called on these firms and asked their cooperation with our effort on style piracy.

Q. Did you have a meeting with any of them?

A. I believe there was a luncheon attended by four or five.

Q. Mr. Farrington—Do you know him?

A. Yes, sir.

Q. Did he attend that luncheon?

A. I think so.

Q. And where did that luncheon take place?

A. At the St. Regis.

Q. And was this instrument presented there at that first meeting?

A. I think not.

Q. Well, the contents of it were discussed; is that right?

A. Not in this form. We asked these people to come to a luncheon where the subject of style piracy was discussed, and it was their suggestion that they have a group of their own. They all, apparently, were in accord with our effort, and, after the luncheon, I called on them to get their signatures, with this agreement preceding it.

Q. About what date was this instrument that we are now talking about, the photostatic copy, executed?

A. I don't know.

Q. Was it some time prior to July the 16th?

A. Yes.

[fol. 136] Q. What year?

A. I don't know. Was it two years ago?

Miss Weintraub: Yes; about 1934.

By Mr. Hogg:

Q. It was after the organization of the Millinery Quality Guild?

A. Yes.

Q. Now, these people that were with you at this luncheon, and went in with you, were they members of the Millinery Quality Guild?

A. No, not here, but there were other men who were members of the guild.

Q. Who went in with you?

A. Yes.

Q. To see these people that you met with?

A. Yes, that's right.

Mr. Hogg: I offer this instrument, if your Honor please. I think it speaks for itself. I offer it in evidence.

Examiner Norwood: This is a copy that he has identified.
Mr. Birrell: This is one of the documents which we stipulated and agreed upon.

Examiner Norwood: It is received as Commission's exhibit 24.

(The document referred to was marked "Commission's Exhibit 24" and received in evidence.)

Mr. Birrell: For the purpose of the record, your Honor, Mr. Hogg's question of Mr. Hyland, the last question, was [fol. 137] that some other members of the Millinery Quality Guild went along with you when you went to see these people, and Mr. Hyland's answer was "Yes," and then Mr. Hogg waved his hand to the signatures on the bottom of this agreement, and it seems to me that that whole situation ought to be clarified.

Examiner Norwood: Yes.

The Witness: I think, Mr. Hogg, there were only four people at that luncheon, four or five.

By Mr. Hogg:

Q. And then it is clear, I think, that these signatures—In other words, they signed this instrument? After they had luncheon?

A. That is right.

Examiner Norwood: That is marked in evidence as Commission's exhibit 24.

By Mr. Hogg:

Q. Did you use, in connection with your work as secretary of Millinery Quality Guild, Incorporated, a registration certificate, if designs were registered?

A. Yes.

Q. Did you bring one down with you?

A. No, I did not.

Q. I hand you this instrument and get you to tell us what it is.

A. (Inspecting paper.) This is the form which we used to register the original design created by one of our members.

[fol. 138] Q. That is, one of the members of the Millinery Quality Guild?

A. Yes, sir.

Q. And what about those of the Uptown Creators'?

A. They also used it.

Q. The same thing?

A. Yes, sir.

Q. And is it still being used now?

A. Yes, sir.

Q. And you are still registering designs or permitting designs to be registered with it?

A. Yes, sir.

Q. Looking at this paper entitled "Petition," and on the inside, the third page of the paper, I note, "Detailed sketch of hat." Just what happens now when one registers a design with you on this page?

A. On this page we put two sketches, two or three, showing the front view of the hat; the side, and the back, and with a swatch of the material used, and a complete description of the hat. That we keep in the— We keep the description and this goes back to the man who originated the model.

Q. You mean—

A. (Interposing) The sketch.

Q. You sent the sketch back to the man who made the model?

A. Yes.

Q. Don't you keep a sketch of the hat itself?

A. No. We have those who bring these in, if there is any question about it.

Q. If there is any question about it?

A. Yes.

Mr. Hogg: I offer this in evidence, if your Honor please.

Mr. Birrell: No objection. We have checked all that.

Examiner Norwood: It will be received, as consisting of [fol. 139] two sheets attached, and is received as Commission's exhibits Nos. 25-A and 25-B.

(The document referred to was marked "Commission's Exhibits 25-A and 25-B" and received in evidence.)

By Mr. Hogg:

Q. I now hand you a yellow sheet to which is attached a red inked piece of paper printed in red ink, and ask you to tell us what that is, please.

A. Well, this was a provision that is supposed to be used on all orders which were placed.

Mr. Hogg: I offer it in evidence.

Examiner Norwood: It will be received and marked as Commission's exhibit 26 in evidence.

(The document referred to was marked "Commission's Exhibit 26" and received in evidence.)

By Mr. Hogg:

Q. In other words, the retail stores sent in an order to a hat factory here in New York, why, that order—I mean this material—the substance of this was placed on the orders?

A. It was supposed to be.

Examiner Norwood: Referring to Commission's exhibit 26?

Mr. Hogg: Yes.

[fol. 140] By Mr. Hogg:

Q. Well, now, you say you don't know whether or not the Millinery Quality Guild, Incorporated, is a corporation?

A. No, I don't.

Q. Who works down there for the Guild?

A. Miss Weintraub.

Q. And yourself?

A. Yes.

Q. Do you have any committees?

A. Yes, we have committees.

Q. What kind of committees? What are the names of them?

A. Well, as the occasion arose, we might appoint a committee to look after details of the fashion show.

Q. Can you give us the names of anyone who ever served on that committee?

A. Yes; Mr. Garfunkel, Mr. Farrington, Mr. Herstein. Then we have further committees on advertising and promotion.

Q. Give us some of the names of those.

A. Mr. Solomon, Mr. Shurman, and Mr. Lorie.

Q. All right. Now, what other committees?

A. Let's see. I have covered advertising and fashion shows—That is all that I know of.

Q. Now, getting back to what I mentioned to you a while ago, about the—this interview with Mr. Babcock and the

Commission's staff, did that take place along back in 1935? February of 1935?

A. I think so.

Q. Well, now, will you explain the general purposes and function of the Millinery Quality Guild, Incorporated, and the Uptown Creators' Guild?

[fol. 141] Mr. Birrell: I object to that question. It is entirely too broad, and it has not been shown that Mr. Hyland is qualified to answer it. If he will restrict his question to the Millinery Quality Guild, I will withdraw my objection.

Examiner Norwood: He can tell about both of them, if he knows it. Answer the question from your own knowledge. Objection overruled.

The Witness: Well, I would say that the general purposes of the organization were to promote better millinery, and to promote fashion shows, through advertising, and then to try and protect the style that was originated by the members of that organization. To my mind, that was the fundamental principles of the organization.

By Examiner Norwood:

Q. Did you ever investigate these styles, or did you have a committee to investigate the styles, to see whether or not they were original or should be registered?

A. Yes, sir.

Q. And if an imitation were offered for registration, would you, through this committee, discover that?

A. Yes, it would be discovered.

By Mr. Hogg:

Q. When did the Millinery Quality Guild first get started, and how did they get together to start with?

[fol. 142] A. Well, I would say that originally they met more as a social crowd to discuss the difficulties that they met with in the business. Our business has been very difficult because of the lowering of general price levels. They were anxious to improve that, for the customers and for themselves.

Q. Well, will you kindly tell us the names of those concerns that are members of the Millinery Quality Guild, Incorporated?

A. Yes. (Inspecting paper.) I think this is correct, with the exception of two. If I can just have your pencil— (Marking on paper.)—I think, with the exception of those two, it is correct.

Q. I will read that into the record. Is it a fact that the names I am reading now, with their respective addresses, were members of the Millinery Quality Guild?

Cooper & Russell, Incorporated—

Mr. Birrell: And would you add the word "Incorporated" after "the Millinery Quality Guild?"

Mr. Hogg: Yes.

Mr. Birrell: Quite all right. Please correct that.

By Mr. Hogg:

Q. Cooper & Russell, Incorporated, 15 West 39th Street?

A. Yes.

Examiner Norwood: If he will swear to that, why not put it in as an exhibit?

[fol. 143] The Witness: I will swear to the upper one, Judge.

Examiner Norwood: He has erased two of them.

By Mr. Hogg:

Q. All the unerased names on this paper which you hand me here are members of the Millinery Quality Guild, Incorporated?

A. Just the above list.

Q. And these members down here, are they members of the Uptown Creators' Guild?

A. As far as I know.

Q. But as to these stated in the upper list—

A. That is correct.

Examiner Norwood: Do you want to offer that in evidence?

Mr. Hogg: Yes.

Examiner Norwood: The paper is received in evidence as Commission's exhibit No. 27.

(The document referred to was marked "Commission's Exhibit 27" and received in evidence.)

Mr. Birrell: I should like, before it is received in evidence, to object to the receipt of this in evidence until there

is some evidence put in the record with respect to whether the Millinery Quality Guild, Incorporated, is.

Examiner Norwood: Objection overruled.

[fol. 144] Mr. Birrell: May I explain my position on that, if your Honor please?

Examiner Norwood: Certainly.

Mr. Birrell: Mr. Hogg has asked the witness whether he knew whether the Millinery Quality Guild, Incorporated, was a corporation, and the witness has said that he did not know. Now, it is obvious to me, if he does not know whether it is a corporation, he cannot know whether people are members of it. I have offered to furnish counsel with a certified copy of the certificate of incorporation and the amendment thereto, and I believe, before any questions are asked with respect to that corporate organization, those should be offered in evidence.

My purpose is this: The Millinery Quality Guild, Incorporated—It is a fact it is not a membership corporation, and cannot, from the very nature of the thing, have members therefore, insofar as it is an attempt to bind this witness or any other witness to an answer that these people are members, it seems to me that I should object, and I must object.

I have no objection to him answering that they have not associated together, or they have purported to be members, or intended to join in a corporation, but I don't feel that I should be called upon to permit answers to a question of that kind if we have not first laid a foundation.

Examiner Norwood: Objection overruled. You can bring that out on cross examination.

[fol. 145] By Mr. Hogg:

Q. Did you keep any minutes of meetings of this Millinery Quality Guild?

A. Yes, sir.

Q. And still keep the minutes?

A. As far as I know, yes, sir.

Q. How often do the members of this guild meet; I mean the Millinery Quality Guild, Incorporated?

A. Well, there is nothing regular about it. If the time and the season was ready for a fashion show, or for some promotional work, they called a meeting: -

Q. And did they call any meetings to pass judgment upon any supposed copying of designs?

A. No. The meeting——

Q. (Interposing.) Get right down to it, and tell us about the meeting, how that worked. Did you do that?

A. Yes. If I had a report that an original hat had been copied, we made an investigation of it through shopping the departments where the copying was being done.

Q. Just a minute now. You may have a shopper, then, say, in Lexington, Kentucky, who goes around to the retail stores——

A. (Interposing.) No. In fact, we have never had any case outside of Greater New York.

Q. All right. Go ahead, then.

A. Now, when we investigated on a report that a copy of an original had been made, we went to the store, and, if necessary, showed them our registration, with the drawing of the original, and asked them to support our effort on style piracy by discontinuing the promotion of that particular hat, and we went to proper lengths to see that it was a definite copy of the original.

[fol. 146] Q. And then what happened, if it was adjudged a copy?

A. Then the style was discontinued.

By Examiner Norwood:

Q. By whom?

A. By the retailer.

By Mr. Hogg:

Q. And what happened back here in your office? Did you have the authority, under the set-up, to pass upon the question of whether or not certain designs were, in fact, copies of a hat that had been manufactured for some member of the Millinery Quality Guild, Incorporated?

A. Well, not entirely myself. When an occasion of that kind arose, we would, between Mr. Goldberg, or whoever the producing manufacturer was, and myself, and possibly the artist who made the sketch, and we would decide whether that was a copy or not, and we would believe the retailer was willing to co-operate.

Q. Well, did you give these non-participating manufac-

turers an opportunity to come in and be heard as to whether it was a copy?

A. Yes, sir.

Q. And did they always have an opportunity?

A. Yes, sir.

Q. And you conducted it, I suppose, at a regular hearing?

A. Yes.

Q. And you presided at those hearings?

A. Right.

Q. And you received evidence?

A. Yes, sir.

[fol. 147] Q. And then, from that hearing, you would make a determination?

A. Yes, sir.

Q. Well, now, did you have a thing like cards that you used up there?

A. For what purpose?

Q. Well, red cards. Did you ever see any red card?

A. No, sir.

By Examiner Norwood:

Q. Now, these forms here on Commission's Exhibit No. 27, referring to Commission's Exhibit No. 27, now, the top list there which you testified was a list of the members of the Millinery Quality Guild—

A. (Interposing.) Yes, sir.

Q. Are they stockholders in the Millinery Quality Guild, Incorporated?

A. I could not say.

Q. You could not say that?

A. No, sir.

Q. What do you mean by the term "members"?

A. Well, simply like a club, your Honor. This man is one of our associates. I never knew of the legal consideration, myself.

By Mr. Hogg:

Q. They carried out the purposes of the Millinery Quality Guild, Incorporated? Did they or did they not?

A. I would say they did.

Q. Now, the members of the Millinery Quality Guild, Incorporated, are rather large and substantial firms, are they?

A. Yes.

Q. Is it not a fact that most of them send representatives to Paris to observe the style trend in hats?

A. Yes.

Q. Now, this registration, where the members of the Mil- [fol. 148] linery Quality Guild, Incorporated, can come in and register a design—tell us whether or not that registration is open to all hat manufacturers in New York City?

A. We have registered styles for people who are not associated with us.

Q. And does your general policy, your general plan of business of registering, permit these non-participating manufacturers to register their designs with you?

A. I would say that it was their purpose, that their purpose was to promote original designs, as far as they possibly could, and while I would say that amongst this group most of the originators were included, so that there was not any great occasion for registration outside of that group, but where a man did have an original idea we have allowed non-members to register, and we have protected their styles.

Q. Now, the smaller members, or the smaller manufacturers, are these that might be affiliated with the Eastern Women's Headwear, Incorporated, as I recall it. Do you permit manufacturers who are members of that organization to register their designs with you?

A. To my knowledge they have never been refused.

Q. Would you permit one for him, if he asked for it?

A. If he had an original design, we would try to promote it, exactly.

By Mr. Norwood:

Q. Would you allow him to register prior to joining the organization?

A. We could not allow him to join the organization.

[fol. 149] By Mr. Hogg:

Q. What do you mean, that you could not allow him to join the organization?

A. Because our particular set-up was on hats above \$6 at wholesale.

Q. And if he sold a cheaper hat than some other manufacturer did, why, you could not allow him to join or become a member of the group?

A. Exactly.

Q. He would have to be up in the highest strata, would you call it?

A. Or they could have a group of their own.

Q. Now, you have been connected with this guild especially ever since you started this plan of style protection?

A. Yes, sir.

Q. Have you ever refused any manufacturer, since you have been there, the right to register his design?

A. Not to my knowledge.

Q. Well, you would probably know about that, wouldn't you, Mr. Hyland?

A. Well, I probably would, but I might not.

Q. Are you very familiar with the women's hat industry throughout the United States?

A. Yes, sir.

Q. Would you kindly tell me about how many women's hat manufacturers there are in New York City?

A. Well, it would just be a guess.

Q. Well, a couple of hundred?

A. Yes.

Q. Are there any located outside of New York City?

A. Many.

Q. In other cities of the United States?

A. Yes, sir.

Q. And some of those are located in the other States of [fol. 150] the United States and manufacture the higher-class hats for women?

A. Yes, sir.

Q. And do they have style or designs, too?

A. Yes, sir.

Q. And none of them are members of your group?

A. Yes, they are.

Q. Are all the members of the Millinery Quality Guild located here in New York City?

A. Not all; Simon Miller & Company, for example, is not.

Q. Well, I am sorry; I misunderstood.

A. Simon Miller & Company are located in San Francisco, California.

Q. Is that the only one that is located outside of New York City that is a member of this Millinery Quality Guild, Incorporated?

A. Yes, sir.

Q. Now, there are a good many other manufacturers of

high-grade hats for women other than Simon Miller & Company located in other States?

A. Yes, sir.

Q. In getting these retail stores to sign a declaration of co-operation, that is in evidence, I suppose you contacted the better half of the retail stores and retail outfits?

A. Yes, sir.

Q. Did you get all of them to sign up?

A. (No answer.)

Examiner Norwood: I think at this point we will take a recess, to reconvene at 2:30 p. m.

(Whereupon, at 1 p. m., a recess was taken until 2:30 p. m.)

[fol. 151]

Afternoon Session

2:30 p. m.

Mr. Birrell: I have conferred with Mr. Hogg, counsel for the Commission, immediately after the closing of the hearing this morning. Now, I have no criticism to make of Mr. Hogg, but, frankly, I am a little bit unable to understand his attitude, and I think to a great extent it must clear up a lot of practically everything that has been put in evidence this morning, and what I have been ready and willing to concede and stipulate, and, more than that, I think that every material allegation in the complaint I am ready to concede and stipulate.

There might be some disagreement between Mr. Hogg and myself as to what these material allegations may be, but I don't believe there will be when it comes down to it.

I think I am prepared to stipulate everything with regard to the facts and the only thing I am not ready to stipulate would be the legal effect of those facts.

Now, in view of that, I spent all day yesterday and I worked almost all of last night, and got up early this morning, and I only had about three or four hours sleep, in order to get this stipulation ready, and I think I have taken every effort to try to work out this stipulation, and, therefore, I [fol. 152] urge very strongly that I be given an opportunity, in view of the fact that I have submitted, to Mr. Hogg a draft of the stipulation, that I be given an opportunity to complete that, to complete the few details of it that I have not as yet finished.

I will give the rest of it to you this afternoon, and then I will come down to Washington at any time; but, in view of that, I think there ought to be some continuance of this until I have an opportunity to have that submitted to counsel for the Federal Trade Commission. I feel that very strongly.

Examiner Norwood: Now, we have the question of getting through with this one witness here. In view of that statement, do you desire no further examination of this witness?

Mr. Hogg: At this time. Of course, I may be glad to recall him, if I have to go ahead and try the case. I might want to recall him, of course, but, in view of that statement, I am sorry my distinguished friend thinks that I am a little bit too—I will not say “unfair”; but I am perfectly willing, Judge, for the case to go over until tomorrow morning, and, if he can get this up this afternoon, this stipulation, why, that will be perfectly all right.

Examiner Norwood: And give you time to study the purposes of the stipulation.

Mr. Hogg: That's right.

I have two exhibits here, however, and I think they will [fol. 153] go in by consent, and I would like to get them in and have them properly marked in the record.

Examiner Norwood: All right. Yes.

Mr. Hogg: Now, if the Examiner please, I offer in evidence a photostatic copy of the certificate of incorporation of the Millinery Quality Guild, Incorporated, with papers attached to it, of course. It is regular on its face, a certificate by the Secretary of State.

Examiner Norwood: Is there any objection by the counsel for the respondent?

Mr. Birrell: There will be no objection to that, your Honor.

Examiner Norwood: It is received as the attached certificate consisting of nine pages, I think it is, as Commission's Exhibit No. 28.

(The document referred to was marked “Commission's Exhibit 28-A to 28-J, inc.” and received in evidence.)

Mr. Hogg: I want to offer in evidence what purports to be and is a photostatic copy of a certificate of change of name, and so entitled, with the certificate of the Secretary of State attached thereto.

Mr. Birrell: I will concede and stipulate that this is a correct copy.

Examined Norwood: It will be received as Commission's Exhibit No. 29, and be so marked.

(The document referred to was marked "Commission's Exhibits 29-A and 29-B" and received in evidence.)

[fol. 154] Examiner Norwood: Is there anything else you wish to say at this time?

Mr. Hogg: No.

Examiner Norwood: Then I understand that counsel will agree that the case is adjourned until tomorrow morning, in order to enable Commission's counsel to receive a proposed stipulation?

Mr. Birrell: That is right.

Examiner Norwood: The hearing is adjourned until tomorrow morning at nine o'clock daylight-saving time, this hearing being adjourned at 2:40 p. m., daylight-saving time.

(Whereupon, at 1:40 p. m., August 21, 1936, the hearing in the above-entitled matter was adjourned.)

[fol. 155] BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., a Corporation, and Its Members as Herein Set Forth, and UPTOWN CREATORS' GUILD, an Unincorporated Association, and its Members as Herein Set Forth

Room 823, 45 Broadway,
New York, New York,
August 22, 1936.

Met, pursuant to adjournment, 8 a. m.

Before John W. Norwood, Trial Examiner

Appearances:

Astor Hogg, Esq., Appearing for the Federal Trade Commission.

Lowell M. Birrell, Esq. (27 Cedar Street, New York, New York), Appearing for Millinery Quality Guild, Inc.; all

individual respondents named in the complaint as belonging to that organization, Uptown Creators' Guild, and all individual respondents named in the complaint as belonging to that organization, except those represented by counsel as shown on page 1.

[fol. 156]

Proceedings

Examiner Norwood: The hearing will come to order. Pursuant to adjournment taken yesterday, the hearing is now reconvened at nine o'clock a. m., daylight-saving time, in room 823, at 45 Broadway, New York, New York.

You may proceed, gentlemen.

Mr. Birrell: If your Honor please, I submitted to Mr. Hogg a proposed stipulation in draft form, relative to the facts involved in this case.

I have also had further discussion with Mr. Hogg relative to these facts set forth in the stipulation, and it is my understanding that on the basis of this stipulation he is agreeable to admit and to stipulate the facts in this case; that time will be necessary to consider the stipulation and also to take it up with counsel for the Federal Trade Commission.

With, I believe, Mr. Hogg's consent, therefore, I move that this matter now be adjourned for a sufficient length of time to permit the matter to be taken up in the manner suggested. Exactly what date that would be, I don't know. In view of Mr. Hogg's prospective vacation, I will be available all summer, and any time it is agreeable I will be glad to come to Washington, or make myself available in New York here, so we could dispose of the matter as soon as possible.

Mr. Hogg: If the Examiner please, I am willing, and, in fact, this morning, I want, also, to request an adjournment of this proceeding pending further consideration of this stipulation that has been talked about so much here in the record.

[fol. 157] I think we are in favorable accordance, but I want to take it up with my superior officers in Washington for their judgment before I would entertain any settlement of the case by stipulation.

If your Honor grants the motion for the adjournment, I should like the case to be adjourned until on or about September 22d, if that meets with the convenience of the

Examiner: That is for this reason, if your Honor please, as I indicated to you: I want to take the week off, next week, to go to my home for personal reasons, for I need to get home, and then, on September 7th, I have an argument before the Commission in the case of Dowd, and on the 16th of September I also have an argument before the Commission in another case, and it would be rather difficult for me to resume the hearing of this case, as your Honor will understand, I will have to make some preparation for those arguments, and, if it suits the convenience of the Examiner, I would like very much to have it adjourned to after the date indicated.

Examiner Norwood: I have got to be back here on the first of September and I have to be in Chicago on the 15th and back here again on the 29th. Now, what date would you suggest?

Mr. Hogg: The 22d?

Examiner Norwood: Yes.

(There was a discussion off the record.)

Mr. Hogg: I have understood that there are some by-laws of this organization, and yet I have never been able to get at them. I would like to ask Mr. Birrell on the record whether or not he has been able to find those by-laws, if there are such things.

[fol. 158] Mr. Birrell: In response to that question I would like to say this; I know that there are by-laws, because I have had them at my office. The by-laws are not complete, nor were they ever formally adopted by either the incorporators or the board of directors, and on one occasion one of the respondents negotiated with the Millinery Quality Guild, called me on the telephone and asked me to send up to him a copy of the certificate of incorporation and the by-laws. My secretary sent them uptown, and the exact individual to whom she sent them she does not now remember. I have searched my files and Miss Weintraub has searched the Millinery Quality Guild files and we are now engaged in searching the files of the various respondents concerned, in an effort to find them. I have no doubt that between now and the time set for the hearing, when the hearing reconvenes, we will be able to find and produce a copy of the by-laws.

Mr. Hogg: Do you know in whose possession they were the last time you knew anything about it?

Mr. Birrell: The last time I knew anything about it specifically, they were in my files.

Mr. Hogg: But you don't have them?

Mr. Birrell: I don't have them, no. As far as I can find out, I have asked the girl in my office who is in charge of files now, and I have asked my secretary, the girl who was my secretary but is so no longer—I have asked her to come back and see if she can find them, but I will make every effort between now and the time the hearing reconvenes, and I feel certain that I can find them.

[fol. 159] Mr. Hogg: Mr. Birrell, I have had numerous witnesses representing various respondents in this case subpoenaed. Now, I told these people, at the time that they came down as I called them, and I have stated to them and they have said they would come down whenever I would want them. Now, in the event I want to hear these witnesses, if the hearing is resumed, will you, on the record, tell me that you will have them appear here without further subpoena, when I ask for them?

Mr. Birrell: Insofar as subpoenas have been issued to respondents whom I represent, I have notified them that I could arrange to avoid their being down here on a subpoena if they would agree to come and make themselves available by telephone call whenever I needed them, and in each instance they have agreed to do so, and therefore I feel free in saying that all of the individuals who have been subpoenaed I can produce on telephone call.

Mr. Hogg: All right; that is good.

Examiner Norwood: And you will get them here, of course, for the next hearing?

Mr. Birrell: Of course, I would like a few hours' notice of those that you wanted.

Examiner Norwood: Yes, of course.

Mr. Birrell: I should also like to state, for the purpose of the record, that a great many of the individuals subpoenaed were not here in New York, they were in Europe, and therefore could not be at the hearing at this time, but they will undoubtedly be available at the time this hearing reconvenes.

Mr. Hogg: I understand that; I understand that several of them are still away.

[fol. 160] Mr. Birrell: That is correct. Also I would like to say further that at least one of them is dead, so, of course, I cannot induce him to come, very well.

Mr. Hogg: That is all, your Honor.

Examiner Norwood: The motion, which is joined in by both counsel, to adjourn this case for the time being, to afford opportunity to stipulate the facts, is granted, and the hearing is now adjourned to reconvene in New York City, at 45 Broadway, New York, New York, in room 823, on the 22d day of September, 1936, at nine o'clock eastern standard time.

(Whereupon, at 8:45 a. m., the hearing in the above-entitled matter was adjourned.)

[fol. 161] BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 2812

In the Matter of MILLINERY QUALITY GUILD, INC., ET AL.

Room 601, 45 Broadway,
New York, New York,
September 22, 1936.

Met, pursuant to adjournment, 9 a. m.

Before John W. Norwood, Trial Examiner

Appearances:

Astor Hogg, Esq., appearing for the Federal Trade Commission.

Lowell M. Birrell, Esq., appearing for the Millinery Quality Guild, et al.

Maurice M. Cohn, Esq., appearing for Peggy Hoyt, Inc.

Proceedings

Examiner Norwood: The hearing will come to order. Pursuant to an adjournment on the 22nd day of August, 1936, and an agreement of the parties as to change of [fol. 162] room from room 823 to room 601, this building, the hearing in this case is now convened at 9 o'clock a. m., Eastern Standard Time in Room 601 at 45 Broadway, New York City, on the 22nd day of September, 1936. Mr. Astor Hogg appears for the Federal Trade Commission and Mr. Lowell M. Birrell appears for a number of Respondents as stated at the first hearing.

Any appearance for the other Respondents?

Mr. Cohn: I am appearing for Peggy Hoyt, Inc.

Examiner Norwood: Go ahead, gentlemen.

Mr. Hogg: If your Honor please, Mr. Birrell, representing in this case all the Respondents excepting Peggy Hoyt, Inc.; Henri Bendel, Inc.; Lilly Dache, Inc., and La Mode Chez Tappe, Inc. Mr. Birrell and I have agreed on a stipulation as to the facts, as to all these Respondents that he represents. I now want to read into the record that stipulation as to the facts.

Mr. Birrell: That is correct, your Honor.

Examiner Norwood: Go ahead.

Mr. Hogg: In the matter of the Millinery Quality Guild, Inc., a corporation, and its members as herein set forth, and Uptown Creators' Guild, an unincorporated association, and its members as herein set forth; it is hereby stipulated and agreed by and between the Attorney for the Federal Trade Commission and the Attorney for the Respondents enumerated at the foot of this stipulation, that in order to dispose of this proceeding the following statement of facts, together with the evidence heretofore taken and found in the record, may be taken as the facts in this [fol. 163] proceeding in lieu of further testimony and evidence, and that the Commission may proceed upon this statement of facts and evidence, heretofore produced, to make its report stating its findings as to the facts (including inferences which it may draw from said evidence and stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding.

Paragraph One: With respect to the allegations contained in paragraph one of the complaint, Respondent, Millinery Quality Guild, Inc., is a stock corporation, organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 711 Fifth Avenue, in the City of New York, in said State. It was incorporated in the year 1932, and a true and correct copy of the certificate of incorporation certified to by the Secretary of State appears in the record as Commission's Exhibit No. 28-A to 28-J, to which reference is now made. On the 20th day of November, 1935, the corporate name was changed to Millinery Creators' Guild, Inc. All of the stock in the corporation is held by a trustee or trustees for a group of designers and manufac-

turers of Paris, France. It has as directors representatives of various of the Respondents named in the complaint as members of the Millinery Quality Guild, Inc. None of the Respondents are members of, or own stock in, the Millinery Quality Guild, Inc. However, Millinery Quality Guild, Inc., is, and at all times mentioned in the complaint was, under [fol. 164] the domination and control of the Respondents named in the complaint as members thereof; although a stock corporation, it has permitted itself to be held out and represented to the public and to the retail trade and the customers and competitors of the Respondents named as members thereof, as a membership corporation with membership composed of the Respondents who are so named in the complaint; that it has permitted itself to be used and has been used by the Respondents named as members thereof as an instrumentality for the carrying out of the plan and agreement relative to style piracy hereinafter referred to. The various Respondents other than Millinery Quality Guild, Inc., cited in the complaint, are corporations, individuals, firms, and partnerships who are engaged in the designing and manufacturing of ladies' hats at places of business located in the State of New York and elsewhere in the United States (wherever the word Respondents is hereinafter in this stipulation used it shall be considered to refer to the Respondents other than Millinery Quality Guild, Inc.). Approximately 25 per cent of their business consists in the manufacture of copies of hats originally designed, manufactured, and sold by French milliners, and 75 per cent thereof is the manufacture of hats originally designed, manufactured and sold by the Respondents themselves, and in the sale of said ladies' hats to retail dealers, many of whom are located in the States other than the States of manufacture, causing said ladies' hats, when sold, to be transported from their respective places to the purchasers thereof. There has been and now [fol. 165] is, a constant flow of trade and commerce in said products between the Respondents cited in the complaint and retailers in hats located throughout the several States of the United States. In the course of conduct of their business the Respondents were at all times mentioned in the complaint, and still are in competition with each other and in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of similar products in commerce as hereinabove set out.

Paragraph Two: With respect to the allegations contained in paragraph two, the alleged Respondent, Uptown Creators' Guild, has no articles of association, nor any by-laws, nor did the various Respondents named in the complaint as members of said Uptown Creators' Guild take any action toward the creation of such an association, beyond one or two of said Respondents having lunched with each other and with representatives of the Respondents named in the complaint as members of the Millinery Quality Guild, Inc.; and certain of the Respondents named in the complaint as members of such Uptown Creators' Guild having signed the agreement which appears in the record as Commission's Exhibit No. 24, and having permitted themselves to be held out to the public as members of such an association without protest. The Respondents named in the complaint as members of said Uptown Creators Guild are engaged in designing, manufacturing, selling, and distributing millinery including ladies' hats to retail dealers located in States other than the State of manufacture, causing such ladies' hats, when sold, to be transported from their respective places of manufacture in the State of New York, or other State of manufacture, to the purchasers thereof located in the various States of the United States. There has been, and now is, a constant current of trade in commerce in such ladies' hats between the Respondents designated in the complaint as members of such association and retail dealers in such hats. In the course and conduct of their respective businesses, the Respondents designated in the complaint as members of said association at all times were, and still are, in competition with each other and in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The Respondents named in the complaint as members of the Uptown Creators' Guild were all held out to the public and to the retail dealers in ladies' hats by the Respondents named in the complaint as members of the Millinery Quality Guild, Inc., as being members of an association known and designated as Uptown Creators' Guild. The situation with respect to the various Respondents named as members of the Uptown Creators' Guild, differs in so far as the agreement which appears in the record as Commission's Exhibit 24, is concerned, certain thereof having signed said agreement and others not having done

so. In this connection reference is made to the photostatic copy of the said agreement which appears in the record as Commission's Exhibit No. 24.

[fol. 167] Paragraph Three: With respect to the allegations contained in paragraph three of said complaint, the Respondents' corporations, individuals, firms, and partnerships, named in the complaint, are substantially all originators of the leading styles of high class ladies' hats and are manufacturers and sellers of high class ladies' hats. In general, the hats manufactured and sold by the Respondents will at wholesale sell at a price of about \$8 per hat, but certain of the Respondents manufacture hats to sell at wholesale at \$5 per hat. Many, but not all, of the Respondents maintain designing departments and employ designers who are constantly employed in the origination of new styles of hats, and many of such designers visit Paris, France, and other European cities to observe the trend of styles and secure original French models from which they later devise various adaptations which are called and known as "copies." The style element is the most important factor in the sale of ladies' hats, and the late style hats, such as are sold and distributed by the Respondents, are in demand by the purchasing public throughout the United States. The Respondents are among the recognized leaders in the field of ladies' hats so far as style and design are concerned and the high grade retail dealers and outlets, both in New York and elsewhere in the United States, in order to offer a full line of ladies' hats, would normally be required to procure at least some of their models from the manufacturers named in the complaint as members of the Millinery Quality Guild, or Uptown Creators' Guild.

[fol. 168] Paragraph Four: With respect to the allegations of paragraph four in the complaint: In the year 1934, the Respondents named in the complaint as members of the Millinery Quality Guild, Inc., professing to act as members of the Millinery Quality Guild, Inc., and through the name of such corporation, undertook to prevent, in so far as possible, the piracy of style and design of ladies' hats designed and sold by such Respondents, and, as part of such undertaking, the said Respondents named in the complaint as members of the Millinery Quality Guild, Inc., have adopted and still have in effect the following methods and practices:

(a) The establishment and operation of a registration bureau at the offices of the Millinery Quality Guild, Inc., under the supervision of its officers and employees wherein the creators of original designs and styles may register their models; that it is the usual practice, once the model is accepted by the registration bureau, to regard such model as an original design and style of the person filing and registering the same and any imitation and copying thereof will in the ordinary course be treated and considered as design piracy. However, in the case of any alleged design piracy, such filing and registration is not conclusive but the matter is determined by a committee of one or more of the Respondents named as members of the Millinery Quality Guild, Inc., or by the officers and employees of the Millinery Quality Guild, Inc.

(b) The said Respondents named in the complaint as members of the Millinery Quality Guild, Inc., and the Millinery Quality Guild solicited and secured from a large number of the retail outlets in the various States of the United States an agreement styled "Declaration of Cooperation." Between such retail dealers and the Millinery Quality Guild, Inc., said agreement being included herein and made a part hereof by reference and the same appearing in the record as Commission's Exhibit No. 1.

(c) Said Respondents named in the complaint as members of the Millinery Quality Guild, Inc., and the Millinery Quality Guild, Inc., sought and secured the cooperation of the Respondents named in the complaint as members of the Uptown Creators Guild in carrying out and enforcing their plan to eliminate piracy of design and style and in such connection secured the signature of certain of the Respondents named in the complaint as members of the Uptown Creators Guild to a certain agreement which is set out in subparagraph (c) of paragraph four of the complaint which agreement is in evidence in the record as Commission's Exhibit 24 and reference is made thereto as to which of the Respondents actually signed the same.

Paragraph Five: With respect to the allegations contained in paragraph five of the complaint: The Respondents named in the complaint as members of the Millinery Quality Guild, Inc., and the other Respondents named at the foot of this stipulation, from and after the date of signa-

ture by them of the agreement, above set forth, and pursuant to such agreement and by concerted action, made it a [fol. 170] condition precedent to the sale of their products to retailers that such retailers either have signed the "Declaration of Cooperation" or have agreed to be bound by and act in accordance with the principle of prevention of style piracy therein announced and the Respondents named in the complaint as members of the Millinery Quality Guild, Inc., and the other Respondents named at the foot of this stipulation have announced that they would refuse to sell, and in certain cases have refused to sell, their products to any retailer or retailers who have failed or refused to cooperate in the said plan for the elimination of style piracy. In and by the foregoing plan, the Respondents have attempted to compel, and still are attempting to compel, retail dealers who are desirous of selling hats manufactured by them to make it a condition of their purchase of ladies' hats from manufacturers that the order is placed upon the seller's warranty that the hats purchased are not copies of styles originated by the Respondents, and that in case the warranty fails then the merchandise may be returned, and accordingly the Respondents have in certain cases brought about the return by the retail outlets to manufacturers from whom they have purchased the same hats which were declared by the Respondents to have been copies of hats originated by certain of the Respondents. In and by such plan and agreement set forth in the "Declaration of Cooperation," retail stores throughout the country are compelled, in so far as the Respondents are able to do so, to recognize the property rights of the Respondents in styles created by them and refrain from purchasing hats which are copies of styles originated [fol. 171] by the Respondents and accordingly to stamp each order for millinery, as hereinabove set forth, and in such manner as to notify the seller that the order is placed only upon the manufacturer's warranty, as above set out. The said Respondents named in the complaint as members of the Millinery Quality Guild, Inc., claimed the right, and still claim the right, to expel from their membership and to deprive from the benefit of their system of registration and their system of style protection generally any firm or corporation which had signed the agreement, above referred to and appearing in the record as Commission's Exhibit No. 24, or is acting as a member of the Millinery

Quality Guild, Inc., and who thereafter solicits the business of or sells its products to a retailer who has failed or refused to sign the "Declaration of Cooperation," and in the instance of Milgram Hats, Inc., a corporation engaged in the sale and manufacture of ladies' hats in interstate commerce, which corporation signed the agreement which appears in the record as Commission's Exhibit No. 24, and which corporation was held out to the public, as hereinbefore set forth, as a member of the Uptown Creators Guild, upon determining that the said Milgram Hats, Inc., was not abiding by the terms of its said agreement, notified the retail outlets and the public in general that they had expelled from their membership said Milgram Hats, Inc., and they advertised the fact of such expulsion in periodicals having an interstate circulation and by circular letters of notification addressed to approximately 1,600 retailers of ladies' hats in various States of the United States who had signed the "Declaration of Cooperation" and who [fol. 172] were cooperating with the plan of the Respondent for the elimination of style piracy above referred to.

Paragraph Six: With respect to the allegations of paragraph six of the complaint: The capacity, tendency, purpose, and result of the plan and agreement, hereinabove referred to, and the acts and practices performed thereunder by said Respondents and said retail dealers, above described, have been, and now are, to restrain commerce by eliminating manufacturers of stylish hats, in the manner hereinbefore set forth, as to the outlets of their products and by limiting the retail dealers, in the manner hereinabove set forth, as to their source of supply, and to deprive the public of the benefits, if any, of competition as to price or otherwise among retailers of stylish hats in this respect, i. e., that the Respondents named in the complaint will not sell their merchandise to said retailers unless such retailers sign and enter into the plan and agreement for the elimination of style piracy; and to prevent the retailers of stylish millinery from purchasing their requirements of said products in interstate commerce from the manufacturers except subject to the limitation and restriction of this plan and agreement, as hereinbefore set forth, and to place in the hands of the Respondents the control of the business practices of the manufacturers of stylish hats for women to the extent of limiting and, if possible, eliminating the

retail outlet for copied styles of manufacturers who copy the styles originated by the Respondents; and to eliminate from manufacture and sale in interstate commerce, hats [fol. 173] which are copies of styles and designs originated by the Respondents or others and registered with the Millinery Quality Guild, Inc.; and to limit interstate commerce in high class ladies' hats to models originated and designed by the actual manufacturer thereof, or respect to which the manufacturer has secured permission to copy from the originator thereof.

Dated this 22nd day of September, 1936, and this is signed by Counsel for the Commission and the following Respondents represented by Mr. Lowell M. Birrell, Counsel for the Respondents.

Millinery Quality Guild, Inc.
 Cooper-Russell, Inc.
 Farrington and Evans, Inc.
 Dave Herstein Company.
 G. Edward Hodge.
 Edgar J. Lorie, Inc.
 L. C. Meyerson, Inc.
 Scherman Hat Company.
 Sergin F. Victor.
 Harry Solomons and May F. Solomons, trading as Harry Solomons & Son.
 Oriole Hat Company.
 John Trinner, Inc.
 Vibo Company, Inc.
 Vogue Hat Company.
 Simon Millinery Company.
 Gladys and Belle, Inc.
 Hatnegie Hats, Inc.
 Jay-Thorpe, Inc.
 John-Frederic, Inc.
 Minnie Kramer, Inc.
 Nicole de Paris, Inc.
 [fol. 174] Florence Reichman, Inc.
 Pauline Kahn, trading as Mme. Pauline.
 Marion Valle, Inc.
 by Lowell M. Birrell, Counsel for Respondents.

Mr. Birrell: There is one thing there, the Vibo Company was out of business before this complaint was issued, so no

answer was ever interposed for them, so I think you will have to eliminate their name from the stipulation because there was never any answer interposed, and I never appeared for them, I just found that out. They are in default, anyway, so I can't really speak for them, but they never interposed an answer in this case, and no one has appeared for them and they were out of business prior to the time the complaint was actually filed. The others stand.

Examiner Norwood: Is it the understanding of Counsel who have agreed to this stipulation that the activities of these Respondents who have signed this stipulation were confined entirely and strictly to the prevention of the piracy of styles which means actually originating, that is which the members actually originated; is that your understanding? That is what it appears to do to me.

Mr. Birrell: If I may say, Your Honor, in substance I think that is a correct statement of the stipulation. However, there are certain implications that flow from this plan and agreement for the elimination of style piracy that perhaps might go beyond the mere elimination of the piracy of styles originated by the Respondents.

Examiner Norwood: I do not think that the fact there [fol. 175] that you have qualified the trade restraint, you have qualified the admission as to effects by the terms in this respect, I think you—

Mr. Birrell: That is correct, but—

Examiner Norwood: As I understand that, just from the one reading, you are agreeing that these Respondents have done nothing in the way of trade restraint except strictly to enforce respect for the styles which they have actually originated.

Mr. Hogg: That is right.

Examiner Norwood: That is styles which are genuine originations, that doesn't cover any activities which the Respondents have employed in preventing their competitors from adopting Paris styles or from giving their own members precedence and advantage in the matter of adopting Paris styles. As I understand, the Commission by its action admits that they have not done that; is that correct?

Mr. Hogg: Well, I do not quite get Your Honor's last statement.

Examiner Norwood: The complaint states certain restraining effects there which had followed from this activ-

ity and under which it might be shown by all of these styles which they have acted in concert to protect, prevents their competitors from selling, which were not in fact originations but were adjudged so by themselves. Will you admit that there are no activities which have gone, or been going on—

Mr. Hogg: Well, this stipulation, if Your Honor please, is self-contained, and I think it speaks for itself.

[fol. 176] Examiner Norwood: Well, I am speaking of what it says, of what I understand it to say; it is admitted, of course, that the genuine originations are protected by concerted action and by agreement and by signing up the retailers, the retail dealers to boycott competitors who sell hats which the Respondents deem to be copies of its hats. That is covered in the stipulation, isn't it?

Mr. Birrell: That is covered in this respect only, that the boycott is not a boycott against the manufacturer; the boycott is a boycott against merchandise, if you wish to characterize it as such, there is no attempt to—

Examiner Norwood: But if the merchandise of this competing manufacturer isn't—

Mr. Birrell: No, only—

Examiner Norwood: If it happens to be a copy.

Mr. Birrell: That is correct; in other words, it is limited to the merchandise which actually is a copy and in so far as any manufacturer, even though he may copy styles, manufactures and tries to sell styles that are not copies, there is no attempt in any way to limit him. That is, at least, the feeling that I have. However, this stipulation is so drawn that certain inferences can be drawn from the facts set forth, and Mr. Hogg and I have given a great deal of time and effort to this stipulation. I feel that the facts set forth here are certainly as definite as any evidence could be produced to support, and if the trial had been completed there would have to be some inferences drawn from those facts in any event.

[fol. 177] Examiner Norwood: That is all right, but the stipulation seems to preclude any inferences along the line I have suggested.

Mr. Birrell: Well, with respect to that, I hope it does, but I am not as clear about it as you are.

Examiner Norwood: I have given a good deal of time to studying the complaint, I am only asking these questions

in order to understand in a general way to what you are agreeing on.

Mr. Birrell: Well, I have never understood, if Your Honor please, that there was any, or there would be any attempt in this case to show that the Respondent had acted in bad faith and had attempted to enforce as original styles, styles which were not such. I never understood that there was anything of that in the case. If there had been it would have surprised me very much.

Examiner Norwood: By this agreement, the Commission appears to take the view that that did not happen, the Commission takes the view that that did not happen.

Mr. Birrell: To a certain extent I think that is correct.

Mr. Hogg: No, Your Honor, I take no views, I want it in the record, I am willing to agree to the facts that we have agreed on that are written in the stipulation.

Examiner Norwood: You agree to introduce no further evidence against these Respondents, you did, didn't you?

Mr. Hogg: Right now I will say that there will be no further testimony introduced against these Respondents that [fol. 178] are entering into this stipulation. However, I propose to introduce evidence directed toward and against these other Respondents that have not entered into this stipulation, namely, Henri Bendel, Inc.; Lilly Dache, Inc.; Peggy Hoyt, Inc.; and La Mode Chez Tappe, Inc.

Examiner Norwood: Very well, we will take a 5 minutes' recess.

(There was a short recess taken.)

Examiner Norwood: What Respondents are we proceeding to take evidence against at this time, Mr. Hogg?

Mr. Hogg: Why, against Henri Bendel, Inc.; Lilly Dache, Inc.; Peggy Hoyt, Inc.; and La Mode Chez Tappe, Inc.

Mr. Birrell: I understand, then, that for the purpose of the record the case is closed against all the Respondents other than these four?

Examiner Norwood: The testimony.

Mr. Hogg: However, may I say to the Judge I would like to leave this case open for a few days for further consideration. I don't expect to finally close this case at this hearing today.

Examiner Norwood: As against Mr. Birrell's clients?

Mr. Hogg: That is right; I want to leave it open a few days.

Mr. Birrell: I have no objection to leaving it open, but as I understand it, the stipulation, as such, completes the taking of testimony against my Respondents subject to some contingency that may arise?

Mr. Hogg: Yes.

[fol. 179] Examiner Norwood: Well, he says now——

Mr. Hogg: I want to leave it open, as I said before, I know it is all closed, that is as far as I know, but I want to leave it open a few days for further consideration.

Examiner Norwood: He reserves the right to introduce further testimony against your clients if he finds it advisable; is that right?

Mr. Hogg: That is what I would like to do.

Examiner Norwood: Until some understanding is entered into with regard to that, I shall consider the testimony as applying to these four Respondents and not to your clients.

Mr. Birrell: That is what I wish to have.

Mr. Hogg: Yes.

Mr. Birrell: That is, any testimony which is being taken now is against the four Respondents other than my clients, so that if there is to be any additional testimony taken with respect to my clients that will be brought to my attention and I will be notified of that?

Examiner Norwood: But if he should find it to the interest of the Government to introduce further testimony against your clients he will give you due notice, and he now reserves the right to do that. That is what I understand.

Mr. Hogg: That is right.

Mr. Birrell: Well, subject to the terms and provisions of the stipulation, it is agreeable to me.

Examiner Norwood: Proceed. The stipulation makes no direct agreement with regard to that, does it, about taking more testimony against your clients?

Mr. Birrell: It is my understanding there would be no [fols. 180-268] additional testimony, that was my understanding of it.

Examiner Norwood: But that isn't included in the stipulation itself?

Mr. Birrell: Well, as my interpretation of the introduction of the stipulation, it was that the evidence previously taken, together with the facts in the stipulation, will be the case before the Federal Trade Commission.

Examiner Norwood: Well, Mr. Hogg made some statements that made me think that he regarded that as closed, but I accept his explanation here that he does not so regard it if, in view of other testimony, or in view of other facts, he finds it to the best interest of the Government to go on.

Mr. Birrell: Well, suppose we pass that for the moment, then.

Examiner Norwood: It is quite usual in these cases for the Attorneys to enter into stipulations as to certain facts which will obviate the necessity of introducing certain classes of witnesses; and then they go right on with the trial with regard to the other issues.

Mr. Hogg: All right.

Examiner Norwood: Are you ready to proceed?

Mr. Hogg: Yes.

Examiner Norwood: Go ahead with your witness.

Mr. Hogg: I will call Mr. Hyland.

[fol. 269] BEFORE THE FEDERAL TRADE COMMISSION

[Title omitted]

ORDER CLOSING THE TAKING OF TESTIMONY

Pursuant to agreement at the close of the last hearing in this case on September 23, 1936, and notice of counsel that no further testimony would be offered, and in compliance with the directions of the Federal Trade Commission contained in its order of the 3rd day of August, 1936, the [fol. 270] taking of testimony and the reception of evidence in this case is hereby closed.

Within fifteen days after the receipt by me of the transcript of the testimony I will make findings of fact and serve a copy thereof on the attorney for the Commission and on the attorneys for the respondents. Each party will have ten days after the receipt of the said findings in which to make exceptions thereto.

The dates for filing of briefs will be as follows: The Commission's attorney has twenty days from the date of the receipt of the findings of fact, and the attorneys for the

respondents have twenty days from the date they receive the brief of the Commission's attorney.

This at Washington, D. C., on the 5th day of December, 1936.

John W. Norwood, Trial Examiner.

JWN:nc.

COMMISSION'S EXHIBIT No. 1

Declaration of Cooperation Between ——— and The
Millinery Quality Guild, Inc. in Their Effort to Stamp
Out Style Piracy in the Millinery Industry

Millinery Quality Guild, Inc., 452 Fifth Avenue, New York,
N. Y.

GENTLEMEN:

We wish to express our desire to cooperate with the members of your organization who have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights in styles created by your members, and will refuse to countenance so-called "style Piracy". Believing the principals declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We will instruct all of our buyers in Millinery that we will not buy any copies of pirated styles created by members of your association; that we will explain to them the great damage which the spreading of this practice is doing to our business and ask their complete cooperation.

Furthermore, we will stamp all of our millinery orders with the following clause:

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of The Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

We welcome this opportunity to put ourselves on record to lend you our fullest cooperation for we know it will lessen the confusion in our business and add to the profits.

Very truly yours, ——— (Store's Name), by ———
——— (Store's Address).

[fol. 272] .. COMMISSION'S EXHIBIT No. 2

A meeting of the members of the Millinery Quality Guild was held on Tuesday, April 2, at 711 Fifth Avenue, at 6:30 p. m.

Present: Messrs. Russell, Lorie, Scherman, Meyerson, Farrington, Solomons, Garfunkel, Herstein, Hyland, and Mr. Mittlemark.

Mr. Hyland advised of a letter he received from Mr. Hodge, tendering his resignation from the Millinery Quality Guild, because of his retail and wholesale business; but that he was willing to join the Uptown Creators' Guild.

Mr. Herstein then suggested that the Uptown Creators' Guild merge with the Millinery Quality Guild, into one organization, under the new name of Millinery Creators' Guild and that the members of the Uptown Creators' Guild be asked to join the new organization as actual members.

Mr. Herstein then made a Resolution that a committee of three be appointed to merge the Uptown Creators' Guild with the Millinery Quality Guild, under the name of Millinery Creators' Guild, and that all the members shall be subject to the same By-Laws and Dues. The resolution was duly seconded by Mr. Garfunkel.

It was suggested that a vote be taken as to the acceptance of this Resolution and all the members present voted in favor of it.

Mr. Herstein advised the members of a luncheon meeting he had with Mr. Jos. Rabinovich of the O. R. & O. Co.—that the firm of O. R. & O. are willing to spend \$25,000 to give the Millinery Quality Guild and its members all the publicity possible.

[fol. 273] Mr. Garfunkel then called upon Mr. Mittelmark, who had consulted with Mr. Rabinovich as to the details of this publicity—after listening to same, it was decided that it was not an association matter, but should be left to the discretion of each individual member to do as they see fit and for Mr. Mittlemark to so advise Mr. Rabinovich.

Mr. Mittlemark then advised of the contemplated paid advertising by Stern Bros. and after discussion, the same was to be referred to the Millinery Code Authority for action.

There being no further business before the meeting, same was thereupon adjourned.

Respectfully submitted, — — —

COMMISSION'S EXHIBIT No. 3

At a meeting of the Millinery Quality Guild, held at the Democratic Club, early in April, it was suggested that Mr. Hyland call upon the following uptown firms, with the idea of promoting a Guild of their own:

Bergdorf, Goodman Co., Henri Bendel, Inc., Lily Dache, Inc., Hatnegie Hats, Inc., Peggy Hoyt, Inc., Jay-Thorpe, Inc., John-Frederics, Inc., LaMode Chez Tappe, Milgrim Hats, Inc., Nicole de Paris, Inc.

After calling upon these people, a committee comprised of Messrs. Herstein, Garfunkel, Victor, Farrington & Hyland, met at a luncheon in the St. Regis Hotel, with Mr. [fol. 274] Frederic of John-Frederic, Inc., Mrs. Brandies of Bergdorf, Goodman, Inc., Mme. Dache and M. P. Hyland and Mr. Chas. Oppenheim of Jay-Thorpe. The objective of the Style Piracy Campaign was explained to these uptown people, and they agreed they would cooperate with the Millinery Quality Guild on its campaign against Style Piracy and False Advertising. Signatures were obtained from those present who were listed as the Uptown Creators' Guild.

Subsequent to this there was a luncheon attended by Mr. Rosenblum of Milgrim Hats, Mr. Frederic, Mr. M. P. Hyland and one other member of the Uptown Creators' Guild.

There never has been any action taken to legally build an organization under this caption—Uptown Creators' Guild.

COMMISSION'S EXHIBIT No. 4

A meeting of the Millinery Quality Guild was held at the National Democratic Club, on Tuesday evening, September 25th.

Present: Messrs. Herstein, Cooper, Meyerson, Farrington, Silverman, Lorie, Solomons, Garfunkel, Victor and Mr. Hyland.

Mr. Herstein presided at the meeting which was called to order at 9:00 p. m.

Mr. Herstein brought up the matter of Milgrim Hats selling to Consolidated Mills—that they were not living up to [fol. 275] the Style Piracy agreement—and after some dis-

cussion it was suggested that Mr. Hyland, Mr. Farrington and Mr. Lorie meet with Mr. Rosenblum and Mr. Leschin on Wednesday, September 26th at 10:30 a. m. in order to discuss this matter.

It was unanimously voted that the firm Holm & Nathan be elected as members of the Millinery Quality Guild and that a letter to this effect be sent to the firm.

The name of DeMarinis & Myers was suggested for membership. After some discussion, it was suggested that this application be left entirely to Mr. Herstein's discretion.

Mr. Herstein read a letter from Rilla Marie, Inc., applying for membership in the Uptown Creators Guild. It was suggested that Mr. Hyland meet with Lilly Dache & John-Frederics for them to pass upon the acceptance of this firm—the same applies to Mme. Pauline, who also applied for membership.

It was further suggested that Mr. Hyland obtain a list of all firms eligible for membership in the Uptown Creators Guild and endeavor to have them join.

The name of Germaine Milly was suggested for membership, and Mr. Solomons volunteered to interview Mme. Germaine relative thereto.

Mr. Lorie suggested the names of Dobbs & Co., Knox Hat Co. and Stetson Hat Co. for membership. It was suggested that Mr. Hyland, Mr. Farrington & Mr. Garfunkel meet with Mr. Montgomery of the Hat Corp. of America and endeavor to obtain their consent to join as members of the Guild.

Mr. Herstein read a communication he received from [fol. 276] H. P. Wasson Co. of Indianapolis, registering a complaint against Wm. H. Block Co. of Ind. in reference to copied hats. After discussion, it was suggested that the Chairman take whatever action he may deem necessary in this matter.

There being no further business before the meeting, same was adjourned.

Respectfully submitted, — — —

COMMISSION'S EXHIBIT No. 5

A meeting of the Millinery Quality Guild was held at the Hotel Chatham on Monday evening, October 15th at 6:00 p. m.

Present: Messrs. Herstein, Farrington, Scherman, Silverman, Cooper, Bovio, Hodge, Garfunkel, Hyland.

Mr. Herstein referred again to the matter of Milgrim Hats, selling the Consolidated Milly. Co. and asked for a resolution from the members present that the firm of Milgrim Hats be dropped from membership of the Uptown Creators Guild. Mr. Garfunkel thereupon made a motion, which was seconded by Mr. Hodge that we suspend the name of Milgrim from our list also that we send a letter to the stores who have signed our Declaration that Milgrim Hats have been suspended for cause—also that a statement to this effect be given to Women's Wear for publication.

[fol. 277] Mr. Garfunkel suggested that we send a list of those California stores who have not signed our Declaration, to the members of the Millinery Quality Guild and the Uptown Creators Guild—also suggested that each member instruct their salesmen who may be on the Coast with new lines, not to show these lines to any store who has not signed the Declaration.

Mr. Garfunkel reported on the conference with the Hat Corp. of America in reference to their membership, and stated that Mr. Montgomery would advise of their decision after a meeting with the department heads. Mr. Herstein then suggested that it might be a good idea to have the heads of the various department stores, who do business with the Hat Corp. communicate with them in an endeavor to induce them to join the Guild. Mr. Hyland was requested to take care of this.

There being no further business before the meeting, same was thereupon adjourned.

Respectfully submitted, — — —.

[fol. 278]

COMMISSION'S EXHIBIT No. 6

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

September 27, 1934.

We have sent you a series of Ads, as per the enclosed, together with a statement that your time-honored store

has not as yet signed the agreement against Style Piracy and False Advertising.

Whereas, before we sent you replicas of the advertisements of the important New York Fifth Avenue stores, please note the enclosed Ads of some of the most important stores throughout the United States, every one of whom is featuring the creations and adaptations made by members of the Millinery Quality Guild and its Associate Membership, for very high style notes in Millinery.

Is it therefore befitting the reputation and the goodwill of your store, built over a great many years and the terrific amount of dollars and cents, to have these customers who built up this goodwill, denied the same right and opportunity of selecting and purchasing only the best in millinery?

Therefore, we ask that you sign this Declaration of Cooperation, in the interest not only of better business, but as [fol. 279] a protection to your customer, so that the undersigned firms would become available to your honored clientele.

Very truly yours, Millinery Quality Guild, Inc. —
Executive Secretary.

Members

Belart Hats, Inc.	Edgar J. Lorie, Inc.
Henri Bendel, Inc.	Meadowbrook Hats
Bergdorf & Goodman Co.	L. G. Meyerson, Inc.
Cooper-Russell, Inc.	Milgrim Hats, Inc.
Lilly Dache, Inc.	Nicole de Paris, Inc.
Farrington & Evans, Inc.	Oriole Hat Co.
Gladys & Belle.	Florence Reichman, Inc.
Harryson Hats	Scherman Hat Co.
Hatnegie Hats, Inc.	Serge
Dave Herstein Co. Inc.	Simon Millinery Co.
G. Howard Hodge	Harry Solomons & Son
Peggy Hoyt, Inc.	John Trinner, Int.
Jay-Thorpe, Inc.	Marion Valle, Inc.
John-Frederics, Inc.	Sally Victor
Minnie Kramer, Inc.	Vibo Co. Inc.
La Mode Chez Tappe	Vogue Hats

[fol. 280]

COMMISSION'S EXHIBIT No. 7

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

September 19, 1934.

We regret to note that your valued store has not yet signed the agreement against Style Piracy and False Advertising which is the most constructive element in promoting fair business practice and protects the interest of your store and your store's customers. Therefore, your honored store and its valued clientele are denied the privilege of either viewing or purchasing the foremost style products of the members of the Millinery Quality Guild and the Uptown Creators Guild, which comprises practically every important creative firm in the Millinery Industry.

We already have the signatures of 1600 of the better stores in the country and would very much regret must we note the absence of the name of your time-honored store.

The undersigned firms would greatly appreciate having you interest yourself in a movement that is in the main, the protection of your store and your store's customers.

Very truly yours, Millinery Quality Guild, Inc. —

Executive Secretary.

[fol. 281]

Members

Belart Hats, Inc.	Meadowbrook Hats
Henri Bendel, Inc.	L. G. Meyerson, Inc.
Bergdorf & Goodman Co.	Marcia, Inc.
Cooper-Russell, Inc.	Milgrim Hats, Inc.
Lilly Dache, Inc.	Nicole de Paris, Inc.
Farrington & Evans, Inc.	Oriole Hat Co.
Gladys & Belle	Florence Reichman, Inc.
Harryson Hats	Scherman Hat Co.
Hatnegie Hats, Inc.	Serge,
Dave Herstein Co. Inc.	Simon Millinery Co.
G. Howard Hodge	Harry Solomons & Son
Peggy Hoyt, Inc.	John Trinner, Inc.
Jay-Thorpe, Inc.	Marion Valle, Inc.
John-Frederics, Inc.	Vibo Co. Inc.
Minnie Kramer, Inc.	Sally Victor
La Mode Chez Tappe	Vogue Hats.
Edgar J. Lorie, Inc.	

[fol. 282]

COMMISSION'S EXHIBIT No. 8

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

September 17, 1934.

The Lessee of your Millinery Department has refused to sign the agreement against Style Piracy and False Advertising which is the most constructive element in promoting fair business practice and protects the interest of your store and your store's customers. Therefore, your honored store and its valued clientele are denied the privilege of either viewing or purchasing the foremost style products of the members of the Millinery Quality Guild and the Uptown Creators Guild, which comprises practically every important creative firm in the Millinery Industry.

Under date of August 31st, we wrote you enclosing a series of copies of millinery advertisements of the best stores in the country, all featuring hats created only by members of the above mentioned Guilds, and we are again enclosing reproductions of a similar group of advertisements.

We already have the signatures of 1600 of the better stores in the country and would very much regret must we note the absence of the name of your time-honored store.

[fol. 283] The undersigned firms would greatly appreciate having you interest yourself in a movement that is in the main, the protection of your store and your store's customers.

Very truly yours, Millinery Quality Guild, Inc., J. M.
S. Hyland, Executive Secretary.

Members

Belart Hats, Inc.
Henri Bendel, Inc.
Bergdorf & Goodman Co.
Cooper-Russell, Inc.
Lilly Dache, Inc.
Farrington & Evans, Inc.

Meadowbrook Hats
L. G. Meyerson, Inc.
Marcia, Inc.
Milgrim Hats, Inc.
Nicole de Paris, Inc.
Oriole Hat Co.

Gladys & Belle
 Harryson Hats
 Hatnegie Hats, Inc.
 Dave Herstein Co. Inc.
 G. Howard Hodge
 Peggy Hoyt, Inc.
 Jay-Thorpe, Inc.
 John-Frederics, Inc.
 Minnie Kramer, Inc.
 La Mode Chez Tappe
 Edgar J. Lorie, Inc.

Florence Reichman, Inc.
 Scherman Hat Co.
 Serge
 Simon Millinery Co.
 Harry Solomons & Son
 John Trinner, Inc.
 Marion Valle, Inc.
 Vibo Co. Inc.
 Sally Victor
 Vogue Hats

[fol. 284]

COMMISSION'S EXHIBIT No. 9

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated.

452 Fifth Avenue, New York City

August 31, 1934.

Although over one thousand of the most important stores in America have signed the Millinery Quality Guild's cooperative agreement on Style Piracy, nevertheless the lessee of your Millinery Department has not seen fit to sign this agreement.

The advertisements enclosed are but a few examples of the presentation of style millinery. All of these hats are produced by the members of the Millinery Quality Guild and their associates, The Millinery Creators Guild, which comprises practically every quality creative maker in the millinery industry.

The favored clientele of your time honored store (just as much as the customers of your competitive stores in your city) are entitled to the opportunity of viewing and purchasing the products of these important creative firms, whose hats are so well known to every style-critical and style-wise woman in America.

Copy of the above mentioned agreement on Style Piracy is hereby enclosed. It sponsors only fair business practice and protects the most important person in this picture [fol. 285] namely; your customer.



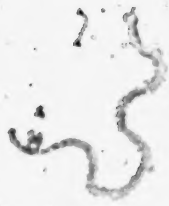
We ask your cooperation.

Very truly yours, — — —, Executive Secretary.


Members

Belart Hats, Inc.
Henri Bendel, Inc.
Bergdorf & Goodman Co.
Cooper-Russell, Inc.
Lilly Dache, Inc.
Farrington & Evans, Inc.
Gladys & Belle
Harryson Hats
Hatnegie Hats, Inc.
Dave Herstein Co. Inc.
G. Howard Hodge
Peggy Hoyt, Inc.
Jay-Thorpe, Inc.
John-Frederics, Inc.
Minnie Kramer, Inc.
La Mode Chez Tappe
Edgar J. Lorie, Inc.

Meadowbrook Hats
L. G. Meyerson, Inc.
Marcia, Inc.
Milgrim Hats, Inc.
Nicole de Paris, Inc.
Oriole Hat Co.
Florence Reichman, Inc.
Scherman Hat Co.
Serge
Simon Millinery Co.
Harry Solomons & Son
John Trinner, Inc.
Marion Valle, Inc.
Vibo Co. Inc.
Sally Victor
Vogue Hats



(Here follows 1 photolithograph, side folio 286)



WOMEN'S WEAR DAILY, TUESDAY, JULY 17, 1934

THE "DECLARATION OF CO-OPERATION" *

against the "Style Piracy" evil is being upheld by

Bergdorf & Goodman Co.

Henri Bendel, Inc.

Lily Dache, Inc.

Hatnegie Hats, Inc.

Peggy Hoyt, Inc.

Jay-Thorpe, Inc.

John-Fredericks, Inc.

La Mode Chez Tappé

Milgrim Hats, Inc.

Nicole de Paris, Inc.

THESE eminent style creators of national renown have signified their intention to help eliminate the greatest evil in the millinery industry — Style Piracy. They have accordingly pledged themselves to show their collections only to such retailers who have signed the Declaration of Co-operation against Style Piracy and False Advertising, as presented to all retailers by the

Millinery Quality Guild

"This Declaration has already received the support of America's most important retailers."

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[fol. 287] COMMISSION'S EXHIBIT No. 11

Telephone Pennsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

July 25th, 1934.

Predicated on the efforts of the Fashion Originators' Guild, and shaped along the same lines upon which they organized to stamp out the great evil of Style Piracy in the dress industry,—The Millinery Quality Guild, whose membership comprises practically every creative maker of style value millinery, has already signed up, every important New York store, without exception. As well as seven hundred of the best stores outside New York to their agreement to cooperate with the Guild against Style Piracy.

So that the valued customers of your important store shall not be deprived of the same opportunities as the clientele of your competitive stores to view and purchase in your store the most authentic style and quality millinery created in the American market; we urge you to secure the signature of the lessee of your millinery department as evidence of the fact that they are honestly favorably inclined to promote the best interests of the industry, and of the stores whose departments are a part of their stewardship.

The genuine style producers in this industry are deter-[fol. 288] mined that the source of style supply be open only to such stores as evidence of their good faith to fair practice.

The customers of your store are entitled to the products of this group as well as the customers of your competitors, particularly because the hats sold in your store carry your honored name and your label should have no important resources denied it.—Only those firms who have subscribed to the Declaration of Cooperation can inspect and purchase the products of the following firms who sign this communication.

Very truly yours, Millinery Quality Guild, Inc., —
—, Executive Secretary.

JMH:SU.

Members

Henri Bendel, Inc.
 Bergdorf & Goodman Co.
 Cooper-Russell, Inc.
 Lilly Dache, Inc.
 Farrington & Evans
 Hatnegie Hats, Inc.
 Dave Herstein Co.
 G. Howard Hodge
 Peggy Hoyt, Inc.
 Jay-Thorpe, Inc.
 John-Frederics, Inc.
 La Mode Chez Tappe

Edgar J. Lorie, Inc.
 L. G. Meyerson, Inc.
 Milgrim Hats, Inc.
 Nicole de Paris, Inc.
 Oriole Hat Co.
 Scherman Hat Co.
 Serge
 Simon Millinery Company
 Harry Solomons & Son
 John Trinner
 Vibo Co. Inc.
 Vogue Hats

[fol. 289]

COMMISSION'S EXHIBIT No. 12

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

July 21st, 1934.

Last week we mailed to all the best retailers in the country the notification that the members of the Millinery Quality Guild on and after July 16th would not be in a position to show their lines to visiting buyers unless their stores had signed our declaration of good faith inaugurated for the purpose of protecting their own interests and eliminating style piracy.

No doubt this notice enclosing a runover of our advertisement in the "Women's Wear" has escaped your attention, and as we know how interested you are to eliminate this great evil which is constantly harrassing your business as well as the Manufacturers we urge you at this time to lend your support to our efforts by returning to us your signed declaration.

We now have in our possession the signatures of all the leading stores in New York and all the important stores

in the principle cities throughout the country. Please, may we have yours by return mail?

Very truly yours, Millinery Quality Guild, Inc., —
— — —, Executive Secretary.

JMH:SU.

[fol. 290] P. S. The enclosed advertisement shows that we have received the active support of the leading style creators and model houses which is most gratifying to us, and is further evidence of the soundness of our plan and of the necessity of your immediate cooperation.

COMMISSION'S EXHIBIT No. 13

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

July 7th, 1934.

This is a copy of the letter sent to the shops on the Millinery Guild list.

In the height of the Spring season we wrote you of the proposed activities of the Millinery Quality Guild in our effort to eliminate that evil which has contributed so much to the retailer's markdowns and to the chaos of the millinery industry namely: Style Piracy.

The response which we have had to this letter has been very gratifying and today we have all the important stores in New York City and the main centers not only signed to our agreement, but also enthusiastic in this effort to protect the value of their merchandise.

Today all code authorities in the ready-to-wear field are investigating seriously this subject, and we are sure the government itself will soon take an active interest in the solution of this problem. In the meantime, we of the Millinery Quality Guild have decided to take a definite stand on the subject as a matter of not only protection to ourselves, but also to those retailers who have signed the Declaration we recently mailed.

We know that you too are in favor of these activities. No doubt our first letter with enclosure escaped your consideration and we, therefore, are enclosing herewith another blank together with a copy of the advertisement appearing in this week's "Women's Wear" calling attention to the Guild's openings in the respective showrooms of our members on July 16th, and stating our position that these firms will not show their merchandise to any firm who has not signed by that time the enclosed agreement.

Knowing your interest in fair trade practices and the sincerity of our efforts to be helpful, may we ask your cooperation by returning to us immediately the agreement properly signed, thereby obliging.

Very truly yours, Millinery Quality Guild, Inc., —
— — —, Executive Secretary.

JMH:SU.

[fol. 292] COMMISSION'S EXHIBITS NOS. 14-A AND 14-B

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

February 28, 1934.

On February 2nd, we wrote to you giving you an outline of the efforts of this organization to stop "Style Piracy." It may interest you to know that we have at this moment the signed agreements of the following concerns in greater New York:

Abraham & Straus, B. Altman & Company, Arnold Constable & Company, Best & Company, Bloomingdale Bros., Bonwit Teller & Company, Bruck-Weiss, Inc., Franklin-Simon & Co., Jay-Thorpe, Inc., Joseph's, Inc., Lord & Taylor, James McCreery & Co., Nelson-Hickson, Peck & Peck, Saks Fifth Avenue, Stern Bros.

Perhaps our previous letters to you on this subject were not properly designed to enlist your attention. We will try again.

The Millinery Quality Guild are making efforts to promote the best interests of the industry and feel that the program as outlined to you will correct the greatest of all evils in our trade.

We as manufacturers say—"you as retailers surely want to know the value of your stock on hand. If you advertise a certain hat to retail at \$12.75, would you have satisfaction in knowing that you need not fear having copies of the same hat appear the following day at \$7.50 or at \$5.00 in your neighbor's window. Further, you will maintain the confidence of your consumer whom you have served for so many years. They will not complain that the hat purchased yesterday from you is now on sale next door at half price."

We say to you, if the retail merchants will back up this organization such a situation will not and cannot arise. No guess work. It has been done in the dress industry and we propose that it shall be done in the millinery industry.

Our plans do not cover the products of any foreign makers. We plan only to protect our retail customers on "designs originated by the members of this organization." Import all the styles you wish, buy copies of any of these styles at any price level you wish, but let us give you protection on the styles we originate. We know how big the percentage is of styles originated right here, and we believe that if you will cooperate with us in stamping out "Style Piracy" in this millinery industry, you will put us in a position to give you service which will mean saving markdowns and increasing your profits.

If you have any contrary reflex to this statement, write us and give us the opportunity of replying; otherwise will you please be good enough to sign and return the enclosed Declaration of Cooperation form, of which we already have five hundred in our possession from the most important retailers in the country.

[fol. 294] With best wishes, and the complete assurance that we believe we are doing a real job to further your interests, we beg to remain

Very truly yours, Millinery Quality Guild, Inc., —
— — —, Executive Secretary.

JMH:SU.
ENC.

COMMISSION'S EXHIBITS NOS. 15-A AND 15-B

Telephone PENnsylvania 6-8796

(Letterhead of)

Millinery Quality Guild, Incorporated

452 Fifth Avenue, New York City

February 2nd, 1934.

Since writing you last week regarding the program of the Millinery Quality Guild "to endeavor to eliminate the evil of style piracy because it jeopardized your profits and lead to a definite destruction of the millinery industry"—history has been made.

We are gratified to be able to write you that the government now recognizes the chaos created in all industries caused by the stealing and copying of designs. A resourceful investigation is now being pursued to stamp out this great evil.

[fol. 295] The enrollment of thousands of ethical merchants all over the country by the Fashion Originators' Guild has encouraged the Millinery Quality Guild to redouble their efforts in securing the same results in the millinery industry. The hour is at hand. We have already secured the signed cooperation of the leading merchants in New York City, who after their experience during 1933 with the Fashion Originators' Guild in the dress industry found it was the only practical method to assure their profits. These merchants will refuse to purchase copies of any of the designs created by the members of the Millinery Quality Guild, and by this agreement provide the means of controlling and eliminating style piracy. They are convinced of the soundness and necessity of our proposals.

Already this list of fine honorable stores have signed the enclosed declaration of refusal to do business on pirated styles.

Abraham & Straus
B. Altman & Company
Arnold Constable & Co.
Bloomingdale Bros.
Bonwit Teller & Co.
Bruck-Weiss, Inc.
Franklin-Simon & Co.

Jay-Thorpe, Inc.
Joseph's, Inc.
Lord & Taylor
James McCreery & Co.
Nelson-Hickson
Peck & Peck
Saks-Fifth Avenue

Stern Bros.

Our entire membership is convinced that in furtherance of your interest, as well as their own, they should sell only to those firms who are listed as thoroughly in accord to banish the greatest of ready-to-wear evils, "Style Piracy."

The assurance of your sympathy to this righteous cause [fol. 296] may be indicated by signing and returning the enclosed declaration.

Every member of this organization will support your decision of cooperation, which joined with such an imposing list of enrolled retailers, should be irresistible in accomplishing results to our mutual benefit.

Very truly yours, Millinery Quality Guild, Inc., —
— — —, Executive Secretary.

JH:SU.

ENC.

COMMISSION'S EXHIBIT No. 16

Alabama

Birmingham:

Leon Burger, Inc., 1915-3rd Ave.

Montgomery:

The Grace Hat Shop, 16 S. Perry St.

Arizona

Phoenix:

Goldwater Merc. Co.

Suzanne % Lucille's, 132 North Central Ave.

Smart Shop, 35 West Adams

Irene Nesom, 240 No. Central

Primrose Dress Shop, 39 North First Ave.

Tucson:

Co-Ed Shop, 60 North Stone Ave.

[fol. 297]

Arkansas

Hot Springs:

Eleanor Harris

Little Rock:

Pfeifer Bros. Inc.

Texarkana:

McCoy, Simms & Johnston Shop, 119 East Broad St.

California

Anaheim:

Mary Millerick Shop, 218 E. Center St.

Beverly Hills:

Mme. Olga, Inc., 339 No. Beyerly Drive

Sally's, 9724 Santa Monica Blvd.

Mollie Mencken Hats, 9551 Wilshire Blvd.

Burlingame:

Miss Pauline Sparrow, 1133 Douglas Ave.

Carmel:

Cinderella Shop

Coronada:

I. Magnin, Hotel Coronada

Del Monte:

I. Magnin, Hotel Del Monte

Fresno:

Bruckner's, California Hotel Bldg.

Mme. Josephine, 2030 Fern St.

Hollywood:

I. Magnin & Co., 6340 Hollywood Blvd.

Roos Bros.

Edith M. Roach, % Harry Cooper, Ltd., 6701 Hollywood Blvd.

Embassy Modes, 6765 Hollywood Blvd.

Long Beach:

Buffum's

Dorothy Shoppe, 115 West 3rd St.

[fol. 298] Los Angeles:

Bullock's, Broadway & 7th St.

Bullock's-Wilshire, 3050 Wilshire Blvd.

The May Co., 8th & Broadway

I. Magnin & Co., Ambassador Hotel

J. W. Robinson Co., 7th & Grand Ave.
 Al Levy & Co. Ltd., % Myer Siegel, 1733 So. Flower St.
 Anna H. Barclay, 816 West 5th St.
 Rachel Baker Co., 835 So. Flower
 E. C. Collins, 722 West 7th St.
 Desmond's, 616 Broadway
 Mabel Fisher, 2986 Wilshire Blvd.
 Nina Foley, 3320 Wilshire Blvd.
 M. S. Gillespie, 5470 Wilshire Blvd.
 Antonette Hagen Shop, 730 So. Flower St.
 Peterson's Gray Shop, 738 West 7th St.
 Muriel Layson, 3289 Wilshire Blvd.
 Sophie Richards, 710 So. Dunsmuir
 Miss Alice Rohrer, 3107 West 6th St.
 Victoria Foster, 135 South Vermont Ave.
 Wood & Devine, 710 South Cloverdale

Oakland:

The Gray Shop, 1502 Clay St.
 I. Magnin & Co., 59 Grand Ave.
 Roos Bros.

Palo Alto: —

The Kiddies & Junior Shop, 530 Ravona St.

[fol. 299] Pasadena:

Howater's, 471 East Colorado St.
 I. Magnin, Hotel Maryland
 Mrs. Ida Shimp, 415 East Colorado St.

Pomona:

Elizabeth A. Ervin, 269 So. Thomas St.

Sacramento:

Consolidated % Bon Marche
 Hale Bros. Dept. Store
 Weinstock Lubin & Co. Inc.

San Diego:

The Marston Co., 438 C St.

San Francisco:

The Emporium
 Livingstone Bros. Inc., Grant & Geary
 I. Magnin & Co., 112 Gerry St.
 Lilly Dache % Ransohoff's, 259 Post St.
 Roos Bros., Inc., 798 Market St.
 Raphael Weill & Co. (Whitehouse)
 Arnold, 307 Sutter St.
 Mrs. Claire Brown, 251 Post St.
 Brownlee's, 245 Post St.
 Miss Estelle Cameron, 426 Sutter St.
 Mme Clement, 362 Post St.
 Nina Foley, 590 Sutter St.
 Genie, 209 Post St.
 Hyman's, 601 Sutter St.
 Joseph Magnin & Co., Stockton & O'Farrell Sts.
 O'Connor Moffatt Co.
 Marie Louise Sweeney, 177 Post St.

[fol. 300] San Jose:

Marvel Millinery

Santa Anna:

Marie Louise Hats, 306 West 3rd St.

Santa Barbara:

I. Magnin, Biltmore Hotel
 Margot, Inc., 19 East Cannon Perdido
 Stowers Millinery, 1125 State St.

Santa Monica:

Elizabeth Haynes

Colorado

Colorado Springs:

Gidding's, Inc.
 Wilbur Suit Co.
 Osborn Millinery, 711 N. Tejon
 The Hat & Dress Studio, 125½ N. Tejon

Denver:

Daniels & Fisher Store
 Denver D. G. Co.

Hoyle Millinery Co., 1522 Calif. St.
 Cornelius Kittredge Modes, 2612 East Colfax Ave.
 May Co.
 McCarthy & Edmonds, 433-16th St.
 The Neustetter Co.

[fol. 301] Connecticut

Bridgeport:

Edna McKusic Millinery, 955 Main St.

Greenwich:

Lucille Lockwood, Inc., 49 West Putnam Ave.
 Mary Brown
 Anna Roberts Runk, 24 North St.

Hartford:

Betty's, Inc., 99 Pratt St.
 R & A % Brown Thomson & Co., 942 Main St.
 The Charles Co.
 Miss Ida L. Farland, 75 Pratt St.
 Helaine Hats, 99 Pratt St.
 Sage Allen & Co.
 Allien Millinery % Steiger's
 Marianne Hopkins Studio, 301 Farmington Ave.
 Outlet Millinery Co.

New Haven:

Ann Allen, Inc., 26 Whitney Ave.
 Hamilton & Co., 960 Chapel St.
 Katinka Shop, 33 Whitney Ave.
 Edw. Malley Co., 904 Chapel St.
 Muhlfelder's, Inc., 20 Whitney Ave.
 Jainchill Millinery Co.
 Style Millinery Shop, 952 Chapel St.
 Band Box, Inc., 150 Orange St.

New London:

Agnes M. Rogers, 129 State St.

Stamford:

Mary Brown Shop, 276 Main St.
 The Ell Shop, Inc., Gurley Bldg.

[fol. 302] Waterbury:

Forester & Co.

Sugenheimer's, Inc., 64 Bank St.

Washington, D. C.

Washington:

Julius Garfinkel & Co., F & 14th Sts.

Hecht Co.

Frank R. Jelleff, Inc.

Woodward & Lothrop

Mandre, Inc. % M. Brooks & Co., 1109 G St. N. W.

Mrs. C. H. Cardwell, 1211 A Connecticut Ave.

Nancy Carter Shop, 1021 Connecticut Ave.

M. A. Doll, 1303 Connecticut Ave.

Erlebacher, Inc., 1210 F St. N. W.

Fox-Leary, 1703 Connecticut Ave.

Francine Shop, 1112 F St.

Howard & Dean, 1017 Connecticut Ave.

Ferle Heller % W. B. Moses & Sons, 11 & F Sts.

Clara Manderfield Nohe, 3404-14th St. N. W.

M. Pasternak, 1219 Connecticut Ave.

Sonnenfeld Corp., % Phillipsborn

R & A % Rizik Bros., 1213 F St. N. W.

Schwab, Inc., Mayflower Hotel

Schenley's, 1229 F St. N. W.

Shenton Millinery, 1309 Connecticut Ave.

[fol. 303]

Florida

Bradentown:

Stevenson's

Bellaire:

Mary Brown

Jacksonville:

Mrs. W. H. Conway, 2236 Oak St.

Frances Marion Shoppe, Inc., 52 West Forsythe St.

Sligh's, Inc., 212 Laura St.

Miami:

Alice Rose Hat Shoppe, 265 East Flagler St.

Flamingo Hat Shoppe, 208 East Flagler St.

Miami Beach:

Rhea's Inc., Pancoast Hotel
 Small's, 2219 Collins Ave.

Orlando:

Shelor Hat Shoppe, Inc., % Dickson Ives Co.

Palm Beach:

Deeb Jabaly, 331 Worth Ave.

Pensacola:

Bon Marche
 Pace-Rosenbloom Co.
 Flora Belle Shop

St. Petersburg:

Ermee, Florida Theatre Bldg.
 Mathilde, Inc., 26-2nd St. N.
 Morsey, 434 Central Ave.
 Mrs. Leon Davis, 101 Snell Arcade

[fol. 304] Tampa:

Clio Henry, Inc., 305 Zack St.
 Onie Aveille Millinery Salon, % Ernest Maas
 Baldwin-Mitchell, % M. Lynch, 508 Tampa St.

Georgia

Albany:

Rosenberg Bros.

Atlanta:

Emporium World, % Davison-Paxon Co., Peachtree &
 Ellis Sts.
 Margaret Gary & Co., 245 Peachtree St.
 Mrs. Jeannette McSwain, 961 Peachtree St.
 Regenstein's Peachtree Store, 209 Peachtree St.
 Martha Skelton, 490 Peachtree St.
 Elizabeth H. Woodruff, 761 Peachtree St.

Augusta:

Mrs. Edith M. Goodrich, 2031 Walton Way

Columbus:

J. A. Kirven Co.

Macon:

The Hat Box, 466 Cherry St.
William R. Kline, Inc.

Savannah:

Chaskin Millinery, % B. H. Levy Bros.

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Chicago, Illinois

Marshall Field & Co.

Carson, Pirie, Scott & Co.

Charles A. Stevens & Co.

Wieboldt Stores, Inc., Milwaukee Ave.

Davis Co.

J. Leschin Stores Corp., % Leschin, Inc.

Blum's-Vogue, 630 So. Michigan Ave.

Leschin % Milgrim, Inc., 600 So. Michigan Ave.

~~Blum's North, Michigan & Walton~~

Conway-Keller, 30 North Michigan Ave.

Quick & Co., 30 No. Michigan Ave.

John T. Shayne & Co., 150 North Michigan Ave.

Pierce Bros. Inc. 158 North Michigan Ave.

Lee Sachs Millinery, 176 No. Michigan Ave.

Princess Pat Apparel, Inc., 174 No. Michigan Ave.

Ella Gordon Millinery, 540 No. Michigan Ave.

Burns, Inc., % Sally K. Greenebaum, 530 No. Michigan Ave.

Leschin Millinery Co., % Jacques, Inc., 545 No. Michigan Ave.

E. C. McAvoy, Inc., 615 No. Michigan Ave.

Helen A. Shop, 664 No. Michigan Ave.

The Tailored Woman, Inc., 648 No. Michigan Ave.

~~Critty Robbin % Ellen French, 664 No. Michigan Ave.~~

Powell 700 North, 700 No. Michigan Ave.

Louise Stevens, Inc., 700 No. Michigan Ave.

Rose Meyer Hat Shop, 840 No. Michigan Ave.

Saks Fifth Ave., 840 No. Michigan Ave.

Bes Ben Shop, 938 No. Michigan Ave.

Martha Weathered Inc., Drake Hotel.

Weathered Misses Shop, 950 No. Michigan Ave.

Berkley Studios, 174 No. Michigan Ave.

Marie Bokelkamp, 429 Arlington Place.
 [fol. 306] Barbour & Co., 1517 Hyde Park Blvd.
 Bennett Co., 108 East Walton Place.
 Anna Blumberg, 5122 Sheridan Rd.
 Ethel Doll Shop, 112 East Oak St.
 Critty-Robbin, 5204 Sheridan Road.
 Effie Davis, 108 East Oak St.
 Eva Millinery, 105 East Delaware Place
 M. L. Fox, 2103 East 71st St.
 H. S. Frank, 149 East Walton Place
 Florence Hart, 1605 East 55th St.
 Amy C. Hartley Millinery, 1365 East 53rd St.
 Florence Hart, 2341 East 71st St.
 Lily Heffernan, Inc., 114 East Walton Place.
 Johnson & Harwood, Inc., 37 No. Wabash Ave.
 Mae Larson, 115 East Oak St.
 Leslie Shop, 902 No. Michigan Ave.
 Beatrice Marcus, 5220 Harper Ave.
 Paris Stores, Inc., 226 So. Wabash Ave.
 Richey Shop, Inc., 5317 Hyde Park Blvd.
 Robes et Manteaux, Inc., 120 East Oak St.
 Marian Hat Shop, 209 So. State St.
 Semco Sisters, 2301 East 71st St.
 Miss Ruth Stratton, 240 Delaware Place
 Vivian Hat Shop, 55 East Washington St.
 Millinery Stores, Inc., 226 So. Wabash Ave.
 Samuel Katz & Co., 121 So. State St.
 Rose M. Simons, 6157 Lakewood Ave.
 Harriet Stein Studio, Belmont Hotel

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Illinois

Champaign:

W. Lewis Co.

Decatur:

Witte Millinery Co., % Linn & Scruggs

Josephine Slattery Millinery, % Stewart D. G. Co.

Evanston:

Reid-Calkins, Inc., Orrington Hotel

Edgar A. Stevens, Inc., 1624 Orrington Ave.

Edythe Trimbley, 632 Church St.

Harriet Woolworth, 706 Church St.

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Freeport:

Mary M. Summers, 21 West Stephenson St.

Geneva:

Miss E. Alexander, 103 3rd St.

Highland Park:

Miss Mabel Ann Ernst, 4 Sheridan Road

Hinsdale:

Hughes Millinery, 110 South Washington St.

Joliet:

Dinet & Co.

Lake Forest:

The Sports Shop, Market Square

Peoria:

Witte Millinery Co., % Clarke & Co.
John Profitlich Co.

[fol. 308] Rockford:

Guest House Shops, 511 North Main
Witte Millinery, % Wortham's, 201 State St.

Springfield:

The John Bressmer Co.
Myers Co.

Winnetka:

Aimee-Winnetka, Inc., 568 Lincoln Ave.
Phyllis Lorraine, Inc., 574 Lincoln Ave.

Indiana

Connersville:

Emral Millinery & Dress Shop

Evansville:

Elsperman Hat Shop, 210 Main St.
Kohl Hat Shop, 306 Old Natl. Bank Bldg.

Indianapolis:

L. S. Ayres Co.
 R & A % William H. Block
 H. P. Wasson & Co.
 Brown Barn Shop, 1441 Talbot St.
 B. Gehrlein, 420 North Meridan St.
 Gertrude, 1551 North Meridan St.
 Gage-Gould Shop, 2706 No. Meridian
 Louise-Miller, Inc., 322 No. Meridian Ave.

Marion:

Nina Ray Swift, 217 So. Washington St.
 The Hat Box

Richmond:

Vouge de Vogue, 25 North 9th St.

Terre Haute:

R & A % A. Herz, Inc.
 Showalter Hat Shop, 25 North 7th St.
 Jame-Wolf Co., 622 Wabash Ave.

[fol. 309] Warsaw:

G. M. Stephenson Shop.

Iowa

Burlington:

Evelyn Shop, 311 No. 3rd St.

Cedar Rapids:

Brammer, Inc. (Bartlett Millinery Mart), 212-2nd St.

Davenport:

Witte Millinery Co. % M. L. Parker Co.
 Lederer Strauss Co. % Peterson, Harned & Van Mauer
 Leighton Millinery Co., % Scharff's, 101 West 2nd St.

Des Moines:

Faith & Peterson, 206 Shops Bldg.
 Lederer Strauss Co. Inc. (Home Office)

J. Leschin Stores, Inc. % The Utica Syndicate
 Wolf's
 Younker Bros.

Dubuque:

Roshek Bros. Co.

Sioux City:

Fishgall's, Inc.
 Lederer Strauss Co. % Pelletier's

[fol. 310] Waterloo, Iowa

Wood's Millinery, 112 East 4th St.

Kansas

Independence:

Montaldo's

Lawrence:

Ackerman Millinery

Salina:

Drake's (Lux Dept.), 126 South Santa Fe

Topeka:

Lederer Strauss Co., % Pelletier's
 Pegues Wright D. G. Co.

Wichita:

Lederer Strauss Co., % George Innes Co.
 Woolf Bros.
 Ben H. Sheaman, % Garfield Leichter

Emporia:

Newman's

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Kentucky

Lexington:

O. R. O. % Embry & Co. Inc.
 Roberts Ladies Hatters, 301 Hotel Lafayette
 R & A % Wolfe Wile

Louisville:

Sonnenfeld Corp. % Beston & Langen
 Hanafee Shop, Heyburn Bldg.
 Miss Bezzie Hannon, 282 Heyburn Bldg.
 Jenny Lind Shoppe, 640-4th St.
 Esther Mondry, Inc., 670 So. 4th St.
 Simmond's, 542 So. 4th St.

Pikesville:

Quality Shop

Richmond:

Margaret Burnam Shop, North 2nd St.

Winchester:

Bonnet Shop, 50 So. Main St.

Louisiana

Alexandria:

Weiss & Goldring

Monroe:

Womans Shop, 102 De Siard St.

New Orleans:

Dress Circle, 1032 St. Charles Ave.
 Krauss Co. Ltd.
 Kreeger Store, Inc., 805 Canal St.
 The Liberty Shop, 2220 St. Charles Ave.
 Marks Isaacs Co.
 J. Leschin Stores Corp. % Gus Mayer, Ltd.,
 723 Canal St.
 Town & Country, Inc., 1432 St. Charles Ave.

Shreveport:

R & A % The Fashion
 Patrician Hat Shop, 507 Milan St.

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Maine

Bangor:

Cortell Segal & Co.

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Bar Harbor:

Goodrich Shops

Biddeford:

Shoppe Sicard, 171 Main St.

Portland:

Virginia W. Chapman, 727 Congress St.

Miss Drusilla H. Haines, 661 Congress St.

Anna B. Hawkes, 666 Congress St.

J. E. Palmer Co., 543 Congress St.

Young Millinery Co. % Owen Moore Co.

Maryland

Baltimore:

R & A % Bonwit-Lennon Co.

Hochschild Kohn & Co.

Hutzler Bros. Co.

O'Neil Co.

Warner & Co., 18 East Baltimore St.

Gaxton Co., 214 No. Charles St.

The Joe E. Morris Shop Inc., 304 North Charles St.

The Bertha, 1130 North Charles St.

The Maison Angélique Co., 328 North Charles St.

Schoen-Russell, Inc., 335 North Charles St.

Chapeaux Shop, 511 North Charles St.

Miller Bros., 1110 North Charles St.

[fol. 313] The Wardrobe, 1104 N. Charles St.

Cumberland:

Barton's Fashion Shop, 33 North Liberty.

Hagerstown:

Mary Condon, 111 North Potomac St.

Salisbury:

Benjamin's

Massachusetts

Boston:

- William Filene's Sons Co.
 Conrad & Co. Inc., 19 Winter St.
 Chandler & Co. Inc., 151 Tremont St.
 Jordon Marsh Co.
 Lamson & Hubbard Corp., 304 Boylston St.
 Emporium World, % Sheppard Stores
 E. T. Slattery Co., 154 Tremont St.
 R. H. Stearns Co., 140 Tremont St.
 R. H. White Co., 518 Washington St.
~~Manahan Co. Inc., 280 Boylston St.~~
 Young Millinery, % Plotkin Bros., 364 Boylston St.
 Solov Hinds Co., 468 Boylston St.
 Patten Hat & Gown Shop, Inc., 472 Boylston St.
 Marion Watson Hats, 607 Boylston St.
 Miss Wilson, 657 Boylston St.
 Hickson, Inc., 667 Boylston St.
 Driscoll, 715 Boylston St.
 Mrs. G. H. Eames, Inc., 717 Boylston St.
 Wilson, Inc., 723 Boylston St.
 Charlotte Phillips, Inc., 653 Boylston St.
 Daniels, 2 Newbury St.
 Gertrude A. Beatty, 35 Newbury St.
 Marie Jeanne, Inc., 36 Newbury St.
 W. C. Keen, 71 Newbury St.
 Fannette Hats, 154 Newbury St.
 Miss Cardinal, 45 Newbury St.
 [fol. 314] Gillespie Hat & Gown Shop, 26 West St.
 Sadie Mandell Shoppe, 26 West St.
 Rose Weiner, Inc., 26 West St.
 Wiggins, 26 West St.
 Mrs. Suzanne M. Wright, 26 West St.
 Allied Millinery, % C. Crawford Hollidge, Tremont &
 Temple Place.
 Wethern's, Inc., 25 Temple Place.
 Jay's, Inc., 11 Temple Place
 Jean M. Brown, 16 Arlington St.
 Helen Crosby Co., 281 Dartmouth St.
 Collins & Fairbanks Co., 383 Washington St.
 Therese, 234 Huntington Ave.
 Frances Farquhar, Inc., Hotel Vendome.
 Young Millinery Co., 19 Kingston St.
 Bertha B. Terr, 41 Winter St.

[fol. 315] Brockton:

M. E. Cain-Hannigan, 192 Main St.
Young Millinery Co., % James Edgar Co.
Storey & Co., 128 Main St.

Brookline:

Henry-Buerkel, Inc., 1376a Beacon St.
McArdell, 1286a Beacon St.

East Lynn:

Elizabeth Owens, 259 Eastern Ave.

Fall River:

Corneau's, 62 No. Main St.
Young Millinery Co., % M. J. Doran

Lowell:

Burke Hat Shop, 128 Merrimack St.
Young Millinery Co. Inc., % Macartney's

Lynn:

Anna M. Reilly (Ladies Club House), 4 Market St.

Marlboro:

Hurley-Tobin, 196 A. Main St.

New Bedford:

Mrs. Marie D. Weston, 262 Union St.
Young Millinery Co., % C. F. Wing Co.

Northampton:

Jean's, 56 Green St.

Quincy:

Young Millinery Co., % Sheridan's

Salem:

Lang's
Newmark's, 207 Essex St.

[fol. 316] Springfield:

The Brigham Co.
 Charles, Inc., 289 Bridge St.
 Arthur Leary, Inc., 1337 Main St.
 Miss Josephine S. Smith, 16 Vernon St.

Waltham:

Grover Cronin Inc.

Wellesley:

Exiner's, 53 Central St.
 Filene's, Central St.
 Suzanne of Paris, 27 Central St.

Winchester:

Miss Ekman, 17 Church St.

Worcester:

Allied Millinery, % Denholm McKay Co., Main St.
 Richard Healy Co.

[fol. 317] Michigan

Ann Harbor:

William Goodyear & Co.

Detroit:

J. L. Hudson Co.
 Tuttle & Clark, 1533 Woodward Ave.
 Walton-Pierce Co., 2110 Park Ave.
 Brennan's Hats, Inc., 148 Bagley Ave.
 Cohn Shop, Inc., 35 Adams St. W.
 Dizik Shoppe, Inc., 1433 Farmer St.
 Miss Emma Hartwig, 2125 W. Grand Blvd.
 D. J. Healy Shops, Inc., 1426 Woodward Ave.
 Himelhoch Bros. & Co., 1545 Woodward Ave.
 Bertha Richmond, 5155 Case Ave.
 Irving Hat Shop, 1530 Washington Blvd.
 Kerwin Millinery, 2314 Park Ave.
 Lola, Inc., 8100 E. Jefferson St.
 Pack-Wolin Shop, 1432 Washington Blvd.
 Sax, Millinery, 1562 Washington Blvd.

Sax-Kay, Inc., 1520 Washington Blvd.
 O. R. O. % B. Siegel Co.
 Sommers Millinery Co. % Russek's, 1448 Woodward Ave.
 L. W. Stewart, 27 John R. St.
 Lewis W. Feinstein Inc. % Milgrim's, Fisher Bldg.
 Huhn-Gregg, Stattler Hotel

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Flint:

Christie Hat Shop, Capitol Theatre Bldg.
 Redmond's Millinery, 527 Harrison St.
 R & A % Vogue

Grand Haven:

The Abigall Shop

Grand Rapids:

Denison Hat Shop, 135 Fulton St. E.
 Leocadia Jones, 8 Jefferson St. E.
 Margaret-Mary Shop, 1264 Plainfield Ave. N. E.
 Nathan Strauss Co., 146 East Fulton St.

Howell:

Sally Ude Shoppe, 114 State St.

Jackson:

Alice Scott Hat Shop, 137 N. Jackson St.

Kalamazoo:

The Gown Shop, 507 West South

Lansing:

Kneeland Millinery, 5 Strand Arcade
 F. N. Arbaugh Co.

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Pontiac:

Waite Bros. & Co.

Saginaw:

Miss Minna Buckler, 109 No. Franklin St.
 Marie A. Mader Shop, 14 Brewer Arcade

Minnesota

Duluth:

The Oriental Shop, 29 W. Superior St.
Oreck's, Inc., 31 West Superior St.

Minneapolis:

Francis Aikmen, Inc. % Bjorkman's 931 Nicollett Ave.
The Dayton Co.
J. Leschin Stores Corp. % John W. Thomas & Co.
The Young-Quinlan Co.
Benton's, 815 Nicollett Ave.
Miss L. B. Davis, 2207 Hennepin Ave.
Hartman's Millinery, 91 So. 10th St.
Jackson Hat Shop, 920 Nicollett Ave.
Phillips Millinery, 910 Nicollett Ave.
A & R Mode, Inc. % Raleigh Shop, 917 Nicollett Ave.
Jackson-Graves, 904 Nicollett Ave.
Fashion Studio, 1036 Nicollett Ave.
Justin's, 80 So. 9th St.
Pierce Bros. Inc. % Harold, Inc., 818 Nicollett Ave.

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St. Paul:

Field-Schlick Co.
Hart, Inc., 350 St. Peters St.
Pierce Millinery, 66 East 6th St.
Sonnenfeld Corp. % Schuneman & Manheimer Co.

Mississippi

Gulfport:

George E. Northrop Co.

Meridian:

The Liberty Shop, Inc.

Missouri

Kansas City:

Woolf Bros., 1022 Walnut St.
Adler's, 1210 Main St.
Albert Millinery, 23 Altman Bldg.

Avon, Inc., Country Club Plaza
 Sonnenfeld Corp. % Berkson Bros.,
 Miss Jean Coventry, 306 Waldheim Bldg.
 J. Leschin Stores Corp. % Harzfeld's
 Mrs. Elizabeth Nash, 4038 Broadway
 Pierce Bros. Inc. % Peck D. G. Co.
 Rubin's, 1004 Walnut St.
 Shadwell Shop, Inc., 128 West 63rd St.
 Swanson, Inc., 1114 Baltimore Ave.
 The Vogue, 1108 Grand Ave.
 Chasnoff, Inc., 1018 Walnut St.
 J. Leschin % Spauldings

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St. Louis:

Famous & Barr Co.
 Rosenthal & Ackerman % T. W. Garland, Inc.,
 410 No. 6th St.
 Scruggs, Vandevoort & Barney
 Sonnenfeld Corp. % Steinberg's, 10th & Olive Sts.
 Stix, Baer & Fuller Co., 601 Washington Ave.
 Rosenthal-Ackerman Milly. Co., 607 St. Charles St.
 Miss Florence G. Baird, 6207 Delmar Blvd.
 Maison de Bernard, 4378 Lindell Blvd.
 Katherine, Inc., 333 No. Euclid Ave.
 Lucille Hat Shop, 6321 Delmar Blvd.
 Moore Shop, 312 No. Euclid Ave.
 The Greenfield's Co., 6th & Locust Sts.
 Sonnenfeld, Millinery Co., 610 Washington Ave.
 French Hat Studio, 4740 McPherson Ave.
 Mode, Inc., 607 St. Charles St.
 Bankston Millinery Co., 4412 Lindell Blvd.
 Rosenthal-Ackerman Co. % Boyd-Richardson,
 Olive at 6th Sts.

Brookfield:

Lena D. Osborne, 209 N. Main St.

Joplin:

O. R. O. Ramsay D. G. Co.

Mexico:

Jurgensen Shop, East Jackson St.

Springfield:

Neff-Petterson Co., 304 St. Louis St.
 Mae Parsley Millinery, 232 Landers Bldg.

St. Joseph:

Woodruff Millinery, 513 So. 6th St.

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Montana

Billings:

Gregory Shop
 LaVigne Hat Shop, 308 No. Broadway

Bozeman:

The Bartlett Hat Shop

Butte:

The Hennessy Co.

Kalispell:

The Imperial

Nebraska

Hastings:

Lederer Straus Co. % Stein Bros.

Lincoln:

Lederer Strauss Co. % Rudge-Guenzel Co.

Omaha:

Goldstein-Chapman Co., 16th & Farnum Sts.
 R & A % Haas Bros.
 Consolidated Millinery % Herzberg's
 McGuire's Inc., 307 So. 16th St.
 R & A % Nebraska Clo. Co.

Nevada

Reno:

The Gray Shop
 The Mayfair Shop, 12 East 2nd St.
 Vanitie Dress Shop, Arcade Bldg.

[fol. 323] New Hampshire

Manchester:

Melbry Hat Shop, 1029 Elm St.

Nashua:

Gaby's Exclusive Shoppe, 85 West Pearl St.

New Jersey

Asbury Park:

Steinbach & Co.

Atlantic City:

Mme Sophia, 1131 Boardwalk

London Shop, Inc., 1901 Boardwalk

East Orange:

Doop's East Orange, 20 Washington St.

Jacquelin-Turner, Inc., 588 Central Ave.

R. H. Muir Co.

I. Silver, 11 No. Harrison St.

Madame Irene, 8 No. Harrison St.

Elizabeth:

Ferle Heller % Fishman's, Inc., 60 Broad St.

Englewood:

Molene, Inc., 70 E. Palisade Ave.

Jersey City:

Rose Jay, 2844 Hudson Blvd.

Montclair:

Catherine Shop, 497 Bloomfield Ave.

Silver, 49 Church St.

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Newark:

L. Bamberger & Co.

Ruth Gannon Spec. Shop, 681 Mt. Prospect Ave.

Doop's, 15 West Park St.
 Kathryn F. McAndrews, 220 Clinton Ave.
 Renax, 197 Washington St.

Paterson:

Miss Rose Rosenstein, 39 Church St.
 Bee Lampell, 27 Church St.

Plainfield:

Virginia Thier, 737 Watchung Ave.

Princeton:

French Shop

Trenton:

H. M. Voorhees & Bro., 135 East State St.
 J. B. Wilson Co. Inc., State & Broad Sts.

Upper Montclair:

Mme Marguerite

West Englewood:

Town Dress Shop, 198 Market St.

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New York State

Albany:

Cottrell & Leonard
 Rose Heidt Shop, 115 State St.
 Miss Ann M. Lawler, 212 State St.
 McQuade Millinery Shop, 234 State St.
 Muhlfelder's, Inc., 55 No. Pearl St.
 Mlle. Jeanne Rauschert, 53 Maiden Lane
 Steefel Bros., 78 State St.

Binghamton:

Fowler, Dick & Walker, Inc.

Bronxville:

Mrs. Frances Hetherington, 120 Pondfield Rd.

Brooklyn:

Abraham & Strauss, 422 Fulton St.
 Ferle Heller % Balch Price, Smith & Fulton Sts.
 Frederick Loesser & Co., Inc.
 R & A % Oppenheim Collins Co., 485 Fulton St.
 Martha Hat Shop, 836 Flatbush Ave.
 Mayflower Shoppe, 9 Newkirk Ave.
 Rivera Millinery Shop, 13 Lafayette Ave.
 Marie Shop, 1118 Ave. J.
 Blanche Margulies, 349 Eastern Parkway

Buffalo:

Eli Fish Corp., % L. L. Berger Co., 514 Main St.
 Buffalo Jenny Co., Hotel Statler
 Flint & Kent
 New Exley Hat Shop, 114 West Chippewa St.
 Ada Grogan, 399 Delaware Ave.
 Hebert Chapeaux Inc., 89 Allen St.
 William Hengerer Co., 465 Main St.
 Mae E. Sparling, 448 Elmwood Ave.
 Henrietta O'Brien, Inc., 346 Delaware Ave.
 R & A % Oppenheim Collins
 Grace Pickard, 535 Main St.
 Bonton % Siegel's, 535 Main St.
 Tegler, Inc., 357 Delaware Ave.

[fol. 326] Elmira:

M. Antoinette Rathbun, 137 West Gray St.

Hornell:

McNamara, 86 Main St.

Jamestown:

Mrs. Beulah B. Kayner, 14 East 4th St.

Larchmont:

Sylvia Cluxton, 92 Chatsworth Ave.

Lockport:

Williams Bros. Co.

New Rochelle:

Amelia Hat Shop, 11 Division St.
 Ruth Hat Shop, 620 Main St.
 Peggy Hats, 10 Centre Ave.

Niagara Falls:

Beir Bros., 123 Falls St.

Ogdensburg:

Algie's Millinery

Ossining:

Lyons & Co., 70 Spring St.

Rochester:

B. Forman Co., Clinton Ave. S.
 Sibley, Lindsay & Curr Co.
 Covner's, 84 East Ave.
 Hester, 39 East Ave.
 Magill Shop, 16 Shelter St.
 O'Hara, Inc., 359 East Ave.
 Alice Ripton, 737 Monroe St.
 R & A % Ripton, 47 East Ave.

Schenectady:

Vanity Fair, 211 Union St.

[fol. 327] Syracuse:

W. I. Addis Co.
 Flah & Co., South Salina St.
 Corman, 228 Harrison St.
 Helmer, Inc., 553 So. Warren St.
 O'Malley's, Syracuse Hotel Bldg.

Tompkinsville:

A. Susskind

Troy:

Towne Shoppe, 46 3rd St.

Utica:

Best Hat Shoppe, 257 Genesee St.
 Estella Hat Shop, 2 Bank Pl.
 Helen Hayes, 3 Cornelia Place
 Henry Martin Co., 113 Genesee St.
 Miss Ella Sullivan, 250 Genesee St.

White Plains:

L. A. Schulman, Inc., 122 Mamaroneck Ave.

Long Island, New York

Babylon:

Sudders Bazaar, 36 East Main St.

East Hampton:

Kip Hat Shop, Main St.

Forest Hills:

Lewis, Station Square

Hampton Bays:

Luzon-Camp King Studio

Cedarhurst:

Gerte Ruth Inc., 499 Central Ave.

[fol. 328] New York City:

B. Altman & Co., 5th Ave. & 34th St.
 Arnold Constable & Co. Inc., 5th Ave. & 40th St.
 Best & Co., Inc., 372 5th Ave.
 Bloomingdale Bros. Inc., Lexington Ave. & 59th St.
 Bergdorf-Goodman Co., 754 5th Ave.
 Bonwit Teller & Co., 721 5th Ave.
 Allied Millinery % A. De Pinna Co., 650 5th Ave.
 Lord & Taylor, 424 5th Ave.
 Gimbel Bros., 33rd St. & 6th Ave.
 R. H. Macy & Co., Broadway & 34th St.
 James McCreery & Co., 5 West 34th St.
 Rosenthal & Ackerman % Russeks, 390 5th Ave.
 Saks-Fifth Ave., 611 5th Ave.
 Franklin Simon & Co., 414 5th Ave.

Stern Bros., 41 West 42nd St.
 John Wanamaker, Inc., Broadway & 8th St.
 Pauline Winter, 2316 Broadway
 Miss Jeanette, 2169 Broadway
 B. Berke Millinery, Inc., 870 7th Ave.
 Gilman's, 358 5th Ave.
 Chez Nevarte, Inc., 665 5th Ave.
 Rita Reynolds, 699 5th Ave.
 Maison Burano, 718 5th Ave.
 Haas Soeurs, Inc., 745 5th Ave.
 Peck & Peck, 585 5th Ave.
 Ferle Heller % Franken, 716 5th Ave.
 Betty-Kay Shop, 769 5th Ave.
 Abercrombie & Fitch Co., Madison Ave. & 54th St.
 Belle Burr, 542 Madison Ave.
 Lillian Gaylord, 605 Madison Ave.
 Nancy, Inc., 625 Madison Ave.
 Rose Krampner, 735 Madison Ave.
 Antoinette Fleming, 765 Madison Ave.
 [fol. 329] Natalie Slocum, 821 Madison Ave.
 Mme. A. Fornier, 625 Madison Ave.
 Jean King, Inc., 640 Madison Ave.
 Dorothy Hat Shop, 247 Park Ave.
 Mme. Lichtenstein, 280 Park Ave.
 Lane Bryant, 1 West 39th St.
 Sophy-May, 131 West 45th St.
 Peck & Peck, 62 West 47th St.
 Marimay, Inc., 14 East 48th St.
 Mrs. M. T. Reynolds, 46 East 50th St.
 Maretta Felley, 32 East 52nd St.
 MacHanauer % Lombardo Ltd., 6 East 53rd St.
 "White," 15 East 53rd St.
 Claire Modes, 17 East 53rd St.
 Zelda, Inc., 14 East 54th St.
 Salinger Millinery, 18 East 54th St.
 Harriet Doremus, Inc., 19 East 55th St.
 J. J. Jonas, Ltd., 12 East 56th St.
 Helen Saltman, 47 West 56th St.
 Ferle Heller, Inc., 17 East 57th St.
 Nelson-Hickson, 4 West 57th St.
 Leschin % Milgrim's, 6 West 57th St.
 Bruck-Weiss, Inc., 20 West 57th St.
 Jay-Thorpe, Inc., 24 West 57th St.

Une Petite Maison, Inc., 40 West 57th St.
 Agnes, 37 West 57th St.
 Marie Lewis, Inc., 39 West 58th St.
 Cohn & Peters, 8 East 59th St.
 Barry Brady, 26 East 60th St.
 Anna Sohmer, 24 East 61st St.
 Rose's French Millinery Service, 154 East 64th St.
 Annette Samis, Inc., 2525 Grand Concourse

[fol. 330]

North Carolina

Charlotte:

Montaldo's

Greensboro:

Montaldo's

Pineharst:

Razook's

Raleigh:

Henry Millinery Corp., % Taylor Furnishing Co., 123
Fayetteville St.

Wilson:

Paris Hat Shoppe, Carroll Bldg.

Winston-Salem:

Montaldo's

North Dakota

Fargo:

Cora R. Shotwell

[fol. 331]

Ohio

Akron:

A. Polsky Co.

Canton:

Halle Bros. Co.
Stern & Mann

Cincinnati:

R & A % Giddings, Inc., 10 West 4th St.
 The Lawton Co., 14 East 4th St.
 H & S Pogue Co.
 John Shillito Co.
 Miss Marie L. Brown, 408 Chamber of Commerce Bldg.
 Mary E. Gallagher, Hotel Sinton
 Henri, 108 East 4th St.
 Jenny, Inc., 8 East 4th St.
 McAlpin Co., 13 West 4th St.
 Josie Schweer, 300 Neave Bldg.
 Miss Mae Smith, Hotel Alms
 Smith Kasson, Inc.
 E. L. Theobald, 1007 Gibson Hotel

Cleveland:

The Higbee Co.
 Foster Frocks, 8832 Carnegie Ave.
 Elizabeth Hill, 1434 Hayden Ave.
 Matheny & Appleby, Alcazar Hotel
 McCaws, 1246 Euclid Ave.
 Lewis W. Feinstein, Inc. % Milgrim's, 1607 Euclid Ave.
 Goetz Mittleman, Inc. % I. Miller Salon, 1309 Euclid Ave.
 Quinn-Maahs, Inc., 1421 Euclid Ave.
 Foster Frocks, Inc., 1371 Euclid Ave.
 M. L. Braunstein, 10002 Euclid Ave.
 O. R. O. % William Taylor Son & Co.

[fol. 332] Columbus:

F. & R. Lazarus & Co.
 Fannie L. Beery, 16 So. 3rd St.
 The Fashion Co., High St.
 Haverfield % French Shop, 152 East Broad St.
 Mrs. Eugene Gray, Inc., 133 East Broad St.
 The Gross Shop, 149 East Broad St.
 Rogers Dress Shop, 48 East Broad St.

Dayton:

Sonnenfeld's % Donnenfeld's Store
 Rike-Kumler Co.
 Lange Millinery Studios, Dayton Biltmore Hotel
 Rubenstein, Inc., 1140 West 3rd St.

Findlay:

Womens Personal Shop, Inc., 405 W. Sandusky St.

Fremont:

Schmidt's Hat Shop

Lima:

R. T. Gregg Co., 212 North Main St.

Johnson's Millinery & Gift Shop, 133 North Elizabeth St.

Mansfield:

Helene's Millinery Studio, 410 Richland Trust Bldg.

Marietta:

Turner-Ebinger Co.

Norwood:

Clara M. Decker, 2088 Sherman Ave.

Portsmouth:

The Atlas Fashion Co.

Staubenville:

Elias Bloch % The Hub

[fol. 333] Toledo:

Cordelle Hat Studio, 213 Spitzer Arcade

The Fell Shop, 18 Spitzer Arcade

Gillespie Shop, 319 Huron St.

Miller, Inc., 515 Jefferson Ave.

The New Idea Shop, 514 Jefferson Ave.

Tappan Shoppe, 222 - 11th St.

Youngstown:

Jonas Shops, % Charles Livingston & Sons, Inc., 225 W. Federal St.

Zanesville:

H. Weber & Sons Co., 421 Main St.

Oklahoma

Ardmore:

Westheimer & Daube
G. M. Henley

Bartlesville:

Montaldo's

Oklahoma City:

Sonnenfeld Corp., % Harry Katz, Inc.
Al Rosenthal's, Inc., Biltmore Hotel
~~Haverfield, % Vogue Fashions, Ramsey Towers Bldg.~~
D. F. Peyton Co., 315 Main St.

Tulsa:

Miss Jackson Shop, 12 East 5th St.
Johnson & Cody, Inc., 21 West 5th
Cora B. Lair's Shop, 507 So. Boston
Mahaffey, 108 East 5th Ave.
Ella Reed Shop, 522 So. Main St.
Suzanne Shop, 10 East 5th
Miss Rogers Hats, 12 East 5th Ave.

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Oregon

Grants Pass:

Golden Rule Corp.

Portland:

Meier & Frank Co.
Alyer Millinery, 602 S. W. Park Ave.
Young's Gown Shop, 130 - 10th St.
Kagi, Inc., 917 S. W. Washington St.

Pennsylvania

Allentown:

Mr. Jay Samuels, 33 North 9th St.

Ardmore:

Elizabeth McGrath, 54 East Lancaster Ave.

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Bradford:

Tierney's, New Terminal Bldg.

Easton:

Patsy Anne Shop, 16 North 3rd St.

Erie:

Douglas Millinery, 25 West 7th St.

Erie D. G. Co.

Loretta Wingerter, 825 Peach St.

Trask, Prescott & Richardson

Germantown:

Anne Cassel, 4549 Pulaski St.

Chapman & Gustaveson, Inc., 40 West Chelton Ave.

Harrisburg:

Mary Sachs, 210 North 3rd St.

Sonia Shop, 18 North 3rd St.

Hazleton:

Wear's, Inc., Hotel Altment

Johnstown:

The Penn Traffic Co.

Lancaster:

Mary Sachs

[fol. 335] Latrobe:

Weis-Seiler, Main St.

Lebanon:

C. L. Rickes, 827 Cumberland St.

Lock Haven:

The Vogue Dress Shop, 33 Belleforte

New Castle:

Ann McKee Apparel Shoppe, 116 No. Mills St.

Norristown:

Lady Pat Hat Shop, 410 De Kalb St.

Oil City:

C. H. Smith Sons Co.

Pottsville:

Hillan's, 17 No. Centre St.

Reading:

Mary Sachs, Hotel Berkshire
Sara R. Haas, 435 Walnut St.

Scranton:

Cecil Clarke Hats, 138 Adams Ave.
Heinz Store
Mildred & Hatty Greene Shoppe, 534 Spruce St.
Ben H. Sheaman, % The Beverley Shop, 418 Lackawanna Ave.

Sewickley:

The Little Hat Shop, 421 Broad St.

Shamokin:

Maude Jane Shop, 40 W. Independence St.

Titusville:

Helen Gordon

Uniontown:

Wright-Metzler Co. of Uniontown

Washington:

Capitol Hat Shop, 33 North Main St.

Williamsport:

May Steinberg, 418 William St.

[fol. 336] York:

Pearl E. Page, 250 East Market St.

Philadelphia:

The Blum Store, 1326 Chestnut St.
 Bonwit Teller & Co., 1700 Chestnut St.
 B. F. Dewees, Inc., 1122 Chestnut St.
 Rosenthal-Ackerman Milly Co., % Oppenheim Collins,
 Chestnut & 12th Sts.
 Peggy Shops, Inc., % Karlton, 1412 Chestnut St.
 Engel, Inc., 1528 Chestnut St.
 Blaylock & Blynn, 1611 Chestnut St.
 Elsie Jacobs, 1705 Chestnut St.
 B. Chertak Wenger, 1229 Walnut St.
 Irma March, 1703 Walnut St.
 Mme. Lisette, 2009 Walnut St.
 Pauline Herman, 1901 Walnut St.
 Sherman-Lindemann, Inc., 1921 Walnut St.
 Elizabeth J. Bell, 126 So. 19th St.
 Nan Duskin, 126 So. 18th St.
 Hemingway, 1524 Locust St.
 Jean Millinery, Hotel Adelphia
 Ryder's, 4862 No. Broad St.

Pittsburgh:

Boggs & Buhl, Inc.
 Frank & Sedar
 Joseph Horne Co.
 David Millinery, 539 Grant St.
 Foster Shop, Inc., 3941 Forbe St.
 Gimbel Brothers
 Wm. Grabowsky & Son, 514 Wood St.
 The Grace Shoppe, 231 Oliver St..
 Mr. E. D. Jordan, 400 Granite Bldg.
 Dolores Shop, 233 Oliver St.
 McCreery & Co., Wood St. & 6th Ave.
 S. & M. McLoughlin, 3050 Jenkins Arcade
 Udick & Hobson, 233 Oliver Ave.

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Rhode Island

Newport:

Bon Ton Millinery, 154 Thames St.

Providence:

Renia Bigney, 334 Westminster St.
 Cherry & Webb Co., Westminster St.

Gladding D. G. Co., 291 Westminster St.
 Helen & Barbara Hats, 120 Union St.
 Ferle Heller, % Jean's, Inc., 236 Westminster St.

Woonsocket:

Mme. Salvas Hat Shoppe, 99 Main St.

South Carolina

Anderson:

Moore-Wilson Co., 105 So. Main St.

Charleston:

Snelgrove's, Inc., 258 King St.

Columbia:

James L. Tapp Co.

Greenville:

Cabaniss-Gardner Co.

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Tennessee

Chattanooga:

Kate Rice Hat Shop

Charles Rosenthal & Co., 920 Market St.

Clarksville:

McNeal & Edwards Co.

Greenville:

The Leader

Knoxville:

S. H. George & Sons

The Little Shop, 524 Gay

Miller's, Inc.

Turner Douglass Shoppe, Inc., 202 Hamilton Bank Bldg.

Van Huss Millinery, 413 West Church St.

Memphis:

Louise Richards, Exchange Bldg.
 Esther Kelley Shoppe, % J. Summerfield, Columbian
 Mutual Tower Bldg.
 The Rose Shop, Peabody Hotel
 R & A, % Phil M. Halle

Nashville:

Loveman, Berger & Teitelbaum
 Tinsley's, Inc., 701 Church St.

Tullahoma:

W. H. Wilson & Son

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Texas

Amarillo:

White & Kirk

Austin:

Josephine Shop
 Haverfield, % Luedecke-Moffatt Co.

Bryan:

Real Hat Shop, 2507 Bryan St.

Corsicana:

Brown's Hat Shop

Dallas:

Mr. Bernie A. Cahn, 3410 Oak Lawn
 Lillian Ferrell Millinery, 1807 Elm St.
 Sonnenfeld Corp., % La Mode, Elm St.
 Jacqueline, Melrose Court
 J. Leschin Stores Corp., % Nieman-Marcus Co.
 Titche-Goettinger Co.
 Haverfield Co., % Volk Bros.
 Walker's Millinery & Dress Salon, 3109 Oak Lawn
 Dreyfuss & Son
 Barnets Smart Shop, 205 N. Ervay

Denison:

J. W. Madden Co.

El Paso:

Popular D. G. Co.

Fort Worth:

Elliott Hats, 601 First Natl. Bank Bldg.

Cheney's, 602 Houston St.

Weldon's, 210 West 7th St.

Swagger Shop, 407 West 7th St.

Sadie Weiser, 3308 La Branch

Coleman's Millinery, 212 West 7th St.

[fol. 340] Greenville:

Graham-Fagg Co.

Houston:

Everett-Buelow Co., 715 Main St.

The Fashion, 913 Main St.

Les Trois, Inc., 3226 Main St.

Alyse's Hat Shoppe, 1807 Albans Road

Scheer & Co., Inc., 3401 Main St.

L. L. Bear, % Smart Shop, 905 Main St.

Paris:

Arthur Cadell Co.

The Parisian Hat Shop, East Side Plaza

San Angelo:

Cox-Rushing-Greer Co.

San Antonio:

Jeanette Burke Shop, Aurora Hotel

Marko Millinery Co., % Frost's

Joske Bros. Co.

Nolan Millinery, 1221 Main St.

Sonnenfeld Corp., % The Vogue

I. Simon, % Wolf & Marx Co.

Miss Wood Millinery, 2518 Main Ave.

Cobey Millinery, 305 N. Cypress

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Temple:

McCelvey-Hartman-D. G. Co.

Tyler:

Lattemaris

Waco:

Cawthorn's, 520 Austin Ave.

Wichita Falls:

Elwyn Shop, Hamilton Bldg.

Vernon:

Dixon D. G. Co.

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Utah

Ogden:

Fred M. Nye Co.

Salt Lake City:

Makoff Classic Shop, 60 E. Temple St.

Mrs. Abba R. Smith, 57 So. Main St.

Mullett-Kelly Co.

Vermont

Springfield:

Miss Rose M. Johnson

Virginia

Hot Springs:

Mme. Najla Mogabgab, Homestead Hotel

Norfolk:

House of Arthur Morris, Inc., 111 Plume St.

David A. Rawls, Inc., 108 West Plume St.

Charlottesville:

Barbara W. Rosser.

Portsmouth:

The Famous, 316 High St.

Richmond:

Danforth Millinery, 202 North 5th St.
The Fanny Millinery, 424 East Grace St.
Miller & Rhoads

Roanoke:

George T. Horne, Inc.
Lazarus, Inc., 510 So. Jefferson St.

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Washington

Aberdeen:

Pros Hat Shop, % Browers.

Olympia:

Buffum & Wright, 516 Capitol Way

Seattle:

Corrine Berger Hat Shop, 1218-5th Ave.
Best's Apparel, Inc., 5th Ave. & Pine Sts.
Bon Marche
Frederick & Nelson
Livingston Bros. Inc., 5th & Pine Sts.
I. Magnin, 5th & Union Sts.
Rhodes Dept. Store
Stanton Frederick Co., 1301-5th Ave.

Spokane:

Haddad, Inc., 831 Sprague Ave.
Pierce Bros. Inc., % Crescent Store

Tacoma:

Graham's Millinery, 911 Broadway

Port Angeles:

Smart Shoppe, 110 So. Lincoln

Yakima:

Buffum & Wright

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West Virginia

Charleston:

Mrs. Rebecca S. Walker, % Coyle & Richardson
Telford's, 821 Quarrier St.

Clarksburg:

Bernice Hat Shop (Rosenberg's, Inc.), 122 So. 4th St.
Anna E. Miller Shop, 128 So. 4th St.

Huntington:

Jonaus, 532-10th St.

Wheeling:

White Sulphur Springs:

Mme. Najla Mogabgab, Inc., The Greenbrier

Wisconsin

Madison:

Simpson Garment Co., 23 No. Pickney St.

Manitowac:

Schuette Bros. Co.

Milwaukee:

Sarah Becker Millinery Inc., 722 No. Jefferson St.

E. F. Bretz & Co., 722 No. Milwaukee St.

Rae Callender, Inc., 708 Milwaukee St.

T. A. Chapman Co., 407 East Wisconsin Ave.

Sarah Coyle, Inc., 775 No. Jefferson St.

Lee-Kolf, Inc., 728 No. Milwaukee Ave.

Reel's

Goldstein Millinery, % Ed Schuster Co.

Angie Wiscow, % Nancy Walker, Inc., 147 East Wisconsin Ave.

Hazel Reinhart Millinery, 742 No. Jefferson St.

Oshkosh:

Frank Stein & Co., 123 Church St.

[fol. 344] Sheboygan:

H. C. Prange Co.

Superior:

Marie's Millinery % Lightbody's

Wausaw:

Gruenheck-Secor Co.

Wyoming

Casper:

Blakey & Co., 142 So. Center St.

Cheyenne:

Wolfer's, Inc.

Freed

Canada

Hamilton, Ontario:

G. St. Robinson Co.

Montreal:

The T. Eaton Co.

Fay's, 1447 St. Catherine St. W.

Henry Morgan & Co. Ltd.

Acme Hat Co. Ltd., 1193 Phillips Place

Toronto:

T. Eaton Co. Ltd., College St.

Holt Renfrew Co. Ltd., Young & Adelaide Sts.

M. Kitching, 54 Wellington St. W.

Winnipeg:

The T. Eaton Co. Ltd.

Hong Kong, China

Maizee's

Manila P. I.

Maizee's

Copy

August 30, 1934.

Mr. Leon Mandel, Mandel Bros., Chicago, Ill.

MY DEAR MR. MANDEL:

It has been called to our attention by several of the members that we have up to the present moment not received your signature to our agreement against Style Piracy. We feel sure that you are in favor of the promotion in this direction for fair business practice.

We are happy to tell you that we have at the present time signed agreements with all the stores in New York, and in addition 1400 of the finest stores in the country.

In order that our members (whose names we are listing below) may be able to present their lines to your representative without question, we hope you will be good enough to join hands with us and sign and return the Declaration of Cooperation agreement which we are enclosing.

Thanking you for your consideration,

Very truly yours, Millinery Quality Guild, Inc., —
—, Executive Secretary.

[fol. 346] Henri Bendel, Inc.
Bergdorf & Goodman Co.
Cooper-Russell Inc.
Lilly Dache, Inc.
Farrington & Evans
Gladys & Belle
Hatnegie Hats, Inc.
Dave Herstein Co.
G. Howard Hodge
Peggy Hoyt, Inc.
Jay-Thorpe, Inc.
John-Frederics, Inc.
Minnie Kramer, Inc.
La Mode Chez Tappe

Edgar J. Lorie, Inc.
L. G. Meyerson, Inc.
Milgrim Hats, Inc.
Nicole de Paris, Inc.
Oriole Hat Co.
Florence Reichman Inc.
Scherman Hat Co.
Serge
Simon Millinery Co.
Harry Solomons & Son
John Trinner
Marion Valle Inc.
Vibo Co. Inc.
Vogue Hats

[fol. 347] COMMISSION'S EXHIBIT No. 18

Copy

August 20, 1934.

Mr. Post, Mandel Bros., Chicago, Ill.

MY DEAR MR. POST:

We are enclosing copies of our previous communications to Mandel Bros. regarding the effort being made against Style Piracy in the Millinery industry. We have practically all of the better stores in the country signed to this agreement, and would very much appreciate having you join with us.

We have most of your neighbors in Chicago signed in the interest of better millinery and feel sure that when this is brought to your attention you will be glad to cooperate with us.

For your convenience we are enclosing herewith another one of our Declaration of Cooperation forms. Thanking you in advance for your consideration of this matter, we are,

Yours very truly, Millinery Quality Guild, Inc., —
—, Executive Secretary.

[fol. 348] COMMISSION'S EXHIBIT No. 19

Copy of Telegram

December 14, 1934.

Mr. John Wineberg, Consolidated Millinery Co., 18 S. Michigan Avenue, Chicago, Ill.

In view of the many conferences had with Mr. J. A. Stein at which conferences he stated he was authorized to speak for Mr. John Wineberg and as Mr. Stein laid down certain conditions which if met would bring about the cooperation of Consolidated Millinery Co. as well as the other firms for whom he spoke. We are pleased to say our membership has agreed and carried out the conditions of Mr. J. A. Stein and the letters embodying these conditions were delivered to Mr. J. A. Stein last Tuesday. Stop Therefore we have informed and written to each and every member of the Uptown Creators Guild and the Millinery Quality Guild they

are free to cooperate in every way with the Consolidated Millinery Emporium World Millinery and the other firms whom Mr. Stein represented Stop On behalf of all the members in our organization permit me to express our gratification for the friendly conclusion of this matter.

J. M. Hyland, Executive Secretary.

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COMMISSION'S EXHIBIT No. 20

Copy

December 26, 1934.

Mr. J. M. Hyland, Executive Secretary, Millinery Quality Guild, 711 Fifth Avenue, New York, N. Y.

DEAR MR. HYLAND:

With reference to your letter of the 22nd, in regard to the following paragraph quoted from your letter:

"From your concluding paragraph, are we to understand that for the present you will not purchase any merchandise from houses like Lilly Dache Inc., John Frederics, Hat-tie Carnegie Inc., and all other members of the Uptown Creators Guild and the members of the Millinery Quality Guild? You know there is no possible way that we can, with honor, now rescind or change the notification sent out in accordance with the agreement made with Mr. Stein."

When I stated I would not take advantage, I meant we would not do anything unethical; but, I certainly will not go on record to you and say from whom we will buy goods and from who we will not buy:

It was impossible for me to leave town this week, however, I expect to be East next week, when I shall be in contact with you.

Wishing you a Happy New Year, I remain,
Very truly yours, John Wineberg.

[fol. 350]

COMMISSION'S EXHIBIT No. 21

September 8, 1934.

Mr. Leon Mandel, Mandel Bros., Chicago, Ill.

DEAR MR. MANDEL:

Several of our members who have received orders from Mandel Bros., were under the impression that you had

signed our cooperative agreement against Style Piracy. Our members now have complete card index registration and in order to properly give your representatives all consideration, we trust you will sign and return the enclosed agreement.

We have signed every good store in New York as well as 1400 of the better stores west of New York.

The agreement tends to improve price levels, curtail markdowns and establish the value of your merchandise on hand. In the interest of fair business practice the movement deserves the support of the better stores and your cooperation will be appreciated.

Very truly yours, Millinery Quality Guild, Inc.,
 — — —, Executive Secretary.

[fol. 351] COMMISSION'S EXHIBIT No. 22

Copy

September 27, 1934.

Millinery Quality Guild, Inc., 452 Fifth Avenue, New York City.

GENTLEMEN:

We are entirely in sympathy with the movement fostered by the members of your organization to refuse to countenance so-called "Style Piracy." We believe, however, that this is the problem of the manufacturer and that it will be impossible for the retailer to pledge himself to avoid all purchases from such style pirates.

Inasmuch as we do not care to give our word on something which we feel to be impossible and still want to do everything within our power to cooperate with you, we would like to go on record as saying that any day that a member or members of your organization feel that we are doing business unwittingly with a manufacturer who is prying on the rights of others, if you will advise us accordingly, we will be glad to take the proper steps to show that we are willing to cooperate with you and that this agreement is more than a verbal one.

Sincerely, Henry N. Wyzanski.

Copy

October 5, 1934.

Mandel Brothers, Chicago, Ill.

DEAR SIRs:

In reply to your Mr. Wyzanski's letter of September 27th, we regret to report your letter, designed to replace our Declaration of Cooperation Agreement against Style Piracy and False Advertising, is not what we expected.

In view of the second sentence of the first paragraph of your letter, we take it for granted that you are not acquainted with the success of the exact same arrangement that has been so successfully carried out by the Fashion Originators Guild in the Dress and Coat industries, to the great benefit of the stores who have so signed the customers, and the manufacturers whose creations were thus protected. We mention this because of your statement—this matter being a manufacturers problem.

On the assurance of your New York Representative, that the letter to be received would modify our regular agreement in small measure, we authorized our members to ship any merchandise being held up awaiting your signing. However, we feel we have an obligation to fulfill with our other stores in Chicago, who have signed our agreement—particularly, Marshall Field & Co., Charles A. Stevens and Carson Pirie Scott & Co. Surely the unqualified signature of cooperation of these three stores, should create no hesitation on your part to do likewise.

We have signed approximately fifteen hundred distributors to date, and believe if we could personally discuss this effort with you, you would be with us 100%. We are more than anxious to meet you part way, but feel sure you will agree that your letter does not accomplish this.

We are sending copies of letters our committee has accepted from R. H. Macy Co., and Arnold Constable & Co. These letters surely give to us an assurance of their interest in our Plan, and voices their willingness to cooperate. It also gives them every protection they consider necessary. If you feel that a letter of this kind is in keeping with your thoughts on this agreement, we would be very happy to accept a similar communication.

We are extremely anxious to add your name to the list of those other most reputable stores throughout the United States who have already signed our Declaration of Cooperation. You can be assured our efforts are designed only in the interest of fair business practice and for the mutual benefit of all concerned, and particularly for the protection of your own customers.

Very truly yours, Millinery Quality Guild, Inc., —
—, Executive Secretary.

JMH:RW.

(Here follows 5 photolithographs, side folios 354-358)

TELEPHONE PENNSYLVANIA 9-81

MILLINERY QUALITY GUILD

INCORPORATED

452 FIFTH AVENUE

NEW YORK CITY

The firms whose signatures are attached hereto have agreed to unite in a circle under a caption of their own choosing. This organization to work in unison with the members of the Millinery Quality Guild on the questions of Style Piracy and the effort to eliminate unfair advertising. The agreement being that the members of this affiliated group will work in unison with the Millinery Quality Guild in making effective the rulings regarding Style Piracy and unfair advertising. They will display the same sign in their show-rooms stating that on and after July 16th no sales will be made and no merchandise will be shown to any store who has failed to sign our agreement regarding Style Piracy which is as follows: -

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of the Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

Mynnie Kramer
By: *W. S. Korman*

Lilly Dache Inc Hatmaking Hats Inc

By: *Lilly Dache* By: *Robert S Walker*

Jay Thompson Inc *John Treasurers Inc*

By: *G. M. G. M. G.* By: *Fredrick Hirsch*

Bryson Thompson Co *Al. G. G. G. G.*

By: *Willie de G. G. G.* *St. J. G. G.*

Gullette Wick *Florence P. G. G.*

John G. G. G. *William G. G. G.*

Wm. G. G. G. *Wm. G. G. G.*

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FEDERAL TRADE COMMISSION
Filed in 2817-
ON THE 21st of May 1924
BY 8/21/24
REPORTED H. G. G. G.
FINANCE

PETITION

BY

FOR THE

REGISTRATION

OF

AN ORIGINAL MODEL

WITH

THE MILLINERY QUALITY GUILD, INC.

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AFFIDAVIT

166C

STATE OF NEW YORK,
(COUNTY) NEW YORK,

ss:

being duly sworn, deposes

and says: That he is the _____ of _____ Street,
Corporation, a domestic corporation, of
in the Borough of Manhattan, City of New York, which corporation is a member of the
MILLINERY QUALITY GUILD, INC.

This affidavit is made by deponent in order to include the MILLINERY QUALITY
GUILD, INC. to cause the registration of hat style No. _____
which deponent warrants and represents is of original style and design and an original
creation of the aforesaid corporation.

Subscribed and sworn to before me this

day of

19

BY: _____

TYPE HAT: _____

SEASON: _____

HAT NO.: _____

FABRIC USED: _____

SPECIAL FEATURES: _____

DESCRIPTION: _____

82

DO NOT WRITE BELOW THIS LINE

FILED

FEB 1 1934

REGISTRY
DIVISION
FEB 1 1934
MILLINERY QUALITY

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COMMISSION'S EXHIBIT No. 256.

166D

DETAILED SKETCH
OF HAT

SWATCHE
OF
MATERIAL
USED

REGISTERED

FEDERAL TRADE COMMISSION
Label No. 3412
IN THE MATTER OF *Thelma ...*
DATE *Feb 14 1935* OFFICIAL *H. ...*
REGISTERED *H. ...*

WHEN OFFICIALLY STAMPED BELOW AND RE-PLACED TO MEMBER, A THINER LABEL MUST BE USED IN ALL HATS WHEN

REGISTERED
DIVISION
FED
1935
MILITARY QUALITY
CARD, INC.

REGISTRATION
NUMBER

RECEIVED

Feb. 14, 1935

ACKNOWLEDGED

ACCEPTED BY

H. ...

THIS CONFIRMATION OF YOUR
REGISTRATION OF THE HAT
SKETCHED HEREON IS OF UTMOST
IMPORTANCE.

DO NOT DESTROY OR MISLAY
THIS SHEET

Blank Page

166E

COMMISSION'S EXHIBIT No. 26.

FEDERAL TRADE COMMISSION
Exhibit No. 2873 ^{Commission's Exhibit No. 26}
IN THE MATTER OF Millinery Quality Guild
DATE 8/21/76 WITNESS [Signature]
REPORTER [Signature]
PLANNING

THIS ORDER IS PLACED UPON THE SELLER'S
WARRANTY THAT THE ABOVE STYLES OF
HATS ARE NOT COPIES OF STYLES ORIGINA
TED BY THE MEMBERS OF THE MILLINERY
QUALITY GUILD, INC. THE PURCHASER RE
SERVES THE RIGHT TO RETURN ANY MER
CHANDISE WHICH IS NOT AS WARRANTED

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[fol. 359] COMMISSION'S EXHIBIT No. 27

Members—Millinery Quality Guild

Cooper-Russell Inc., 15 West 39th Street
 Farrington & Eyans Inc., 711 Fifth Avenue
 Dave Herstein Co., 711 Fifth Avenue
 G. Howard Hodge, 711 Fifth Avenue
 Edgar J. Lorie Inc., 711 Fifth Avenue
 L. G. Meyerson Inc., 711 Fifth Avenue
 Scherman Hat Co., 5 East 37th Street
 Serge, 15 West 39th Street
 Harry Solomons & Son, 711 Fifth Avenue
 Oriole Hat Co., 15 West 39th Street
 John Trinner Inc., 711 Fifth Avenue
 Simon Millinery Co., 989 Mkt. St.-San Fran.
 Vibe Co. Inc., 1 West 39th Street
 Vogue Hat Co., 711 Fifth Avenue

Members—Uptown Creators' Guild

Henri Bendel Inc., 10 West 57th Street
 Bergdorf-Goodman Co., 754 Fifth Avenue
 Lilly Dache Inc., 485 Madison Avenue
 Gladys & Belle, 485 Madison Avenue
 Hatnegie Hats, Inc., 711 Fifth Avenue
 Peggy Hoyt, Inc., 16 East 55th Street
 Jay-Thorpe Inc., 24 West 57th Street
 John-Frederics Inc., 501 Madison Avenue
 Minnie Kramer, Inc., 501 Madison Avenue
 La Mode Chez Tappe, 19 West 57th Street
 Nicole de Paris, Inc., 7 East 55th Street
 Florence Reichman Inc., 16 East 52nd Street
 Mme. Pauline, 6 East 53rd Street
 Marion Valle Inc., 501 Madison Avenue

[fol. 360] COMMISSION'S EXHIBIT Nos. 28-A to 28-J

Certificate of Incorporation of Millinery Quality Guild,
 Incorporated

Pursuant to Article Two of the Stock Corporation Law of
 the State of New York

Coudert Brothers, 2 Rector St., N. Y. C.

Certificate of Incorporation of Millinery Quality Guild,
Incorporated

Pursuant to Article Two of the Stock Corporation Law of
the State of New York

We, the undersigned, desiring to form a stock Corporation, pursuant to Article Two of the Stock Corporation Law of the State of New York, Do Hereby Certify as follows:

First: The name of the proposed corporation (which is hereinafter referred to as the Corporation), is:

[fol. 361] Millinery Quality Guild, Incorporated

Second: The purposes for which the Corporation is to be formed are:

(a) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to maintain, protect, hold, use, own, develop, operate, exploit, directly or through licensees and sublicensees, and to sell, assign, mortgage, pledge or otherwise dispose of or turn to account, or manufacture under or grant licenses and sublicenses in respect of, any letters patent, design patents, copyrights, licenses, trademarks, trade names and any and all inventions, designs, improvements, processes and formulae used in connection with or secured under letters patent of the United States of America, or of any other country or government, and pending applications therefor, including any interest therein.

(b) To carry on, insofar as may be permitted by law, a general mercantile commission and brokerage business; to buy, manufacture, produce or otherwise acquire, hold, own, sell, mortgage, pledge, assign, transfer, import, export, trade and deal in (either as principal, agent, commission merchant, factor, broker, or attorney-in-fact), millinery goods of all kinds and every and all kinds of goods, wares and merchandise, commodities and personal property except bills of exchange, and to make and enter into all manner [fol. 362] and kinds of contracts, agreements and obligations by or with any person or persons, corporation or association in connection with such business or any part thereof and incidental thereto.

(c) To borrow or raise money on the credit of the Corporation and in pursuance thereof to make, accept, endorse,

execute and issue bonds, debentures, promissory notes, bills of exchange or other certificates of indebtedness, and to secure payment thereof by mortgage on, or by assignment, pledge or conveyance in trust of, the whole or any part of the assets of the Corporation of whatsoever character; and to sell, pledge or otherwise dispose of such bonds, debentures, promissory notes, bills of exchange, or other certificates of indebtedness of the Corporation for its corporate purposes.

(d) To purchase, hold, cancel, reissue, sell or transfer shares of the capital stock of this Corporation, provided that the Corporation shall not use its funds or property for the purchase of shares of its own capital stock when such use would cause any impairment of its capital and further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

(e) To maintain offices and agencies either within or anywhere without the State of New York and to conduct its business in any or all of its branches in said State and in [fol. 363] any and all other States of the United States and in the District of Columbia and in any or all territories, dependencies, colonies or possessions of the United States and in any and all foreign countries.

(f) In general, to carry out all or any part of the foregoing objects in any part of the world, as principal, factor, agent, contractor or otherwise, either alone or in conjunction with any person, firm, association or other corporation, either directly or through the ownership or control of the stock of other corporations; and in carrying on its business and for the purpose of attaining or furthering any of its objects, to make and perform such contracts of any kind and description, to do such acts and things and to exercise any and all such powers as a natural person could lawfully make, perform, do or exercise, provided the same be not inconsistent with the laws under which the Corporation is organized.

(g) In general to do any and all of the things hereinbefore set forth and such other things as are incidental or conducive to the attainment of the objects of the Corporation, as principal, factor, agent, contractor or otherwise, either alone or in conjunction with any person, firm, association or corporation, and in carrying on its business and

for the purposes of attaining and furthering any of its objects, to make and perform contracts of any kind and description, and to do such acts and things and to exercise [fol. 364] any and all such powers to the same extent as a natural person might or could lawfully do to the extent allowed by law.

The purposes and powers specified in the clauses contained in this Article Second shall, except when otherwise expressed in this Article Second, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause of this or any other Article in this Certificate; but the purposes and powers specified in each of the clauses of this Article Second shall be regarded as independent purposes and powers, and the specification herein contained of particular powers of the Corporation is not intended to be, and is not, in limitation of, but in furtherance of, the powers granted to corporations under the laws of the State of New York under and in pursuance of the provisions of which the Corporation is formed. Nothing herein contained shall be construed as authorizing the Corporation to carry on the business of discounting bills and notes and other evidences of debt, of receiving deposits, of buying and selling bills of exchange, of issuing bills and other evidences of debt for circulation as money, or engaging in any other form of banking, or of receiving money for transmission, or the transmission of the same, by draft, traveler's check, money order or otherwise; nor as including the business purpose or purposes of a moneyed corporation or a corporation provided for by the Banking, the Insurance, the Railroad and the Transportation Corporation Laws, or an educational institution or corporation which may be incorporated as provided in the Educational [fol. 365] Law, nor as authorizing or intending to authorize the performance at any time of any act or acts then unlawful.

Third. The total number of shares that may be issued by the Corporation is one hundred (100), all of which are to be without par value. The number of shares which are to have a par value is none. The number of shares may be changed from time to time as provided by the laws of the State of New York.

The capital of the Corporation shall be at least equal to the sum of the aggregate par value of all issued shares hav-

ing par value, plus Five Dollars (\$5.00) with respect to each issued share without par value, plus such amounts as from time to time by resolution of the Board of Directors may be transferred thereto.

Fourth. The shares shall not be classified; all the shares shall be known as common shares.

Fifth. The city and county in which the office of the Corporation is to be located is The City of New York, County of New York.

Sixth. The duration of the Corporation shall be perpetual.

Seventh. The number of directors of the Corporation shall be not less than three nor more than twenty-five. The directors of the Corporation need not be stockholders thereof. The number of directors may be changed from time to time as provided by the laws of the State of New York.

Eighth. The name and post-office addresses of the directors until the first annual meeting of the stockholders are as follows:

[fol. 366]

Names:	Post Office Addresses:
E. E. Merino	2 Rector Street, New York, N. Y.
Francis D. Wells	2 Rector Street, New York, N. Y.
C. Truman Thomson	2 Rector Street, New York, N. Y.

Ninth. The name and post-office address of each subscriber to this Certificate of Incorporation and the number of shares which he agrees to take are as follows:

Name	Post Office Address	Number of Shares
E. E. Merino	2 Rector St., New York, N. Y.	1
Francis D. Wells	2 Rector St., New York, N. Y.	1
C. Truman Thomson	2 Rector St., New York, N. Y.	1

Tenth. All of the subscribers to this Certificate are of full age, at least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York; and at least one of the persons named as a director is a citizen of the United States and a resident of the State of New York.

Eleventh. The following provisions are inserted for the regulation and conduct of the affairs of the Corporation and it is expressly provided that they are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) The Board of Directors shall have power to hold its meetings outside the State of New York or within the State of New York, in either case at such place or places as from time to time may be designated by the By-Laws of the Corporation, or by resolution of the Board of Directors or shall [fol. 367] be specified in the respective notices thereof, or shall be specified in waiver of notice thereof, signed by all the directors of the Corporation then in office either before or after the meeting.

(b) The Board of Directors shall have power from time to time to fix and determine and vary the amount of the working capital of the Corporation and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in.

(c) No contract or other transaction between the Corporation and any other corporation shall be affected or invalidated by the fact that any one or more of the directors of the Corporation is, or are, interested in, or is a director or officer, or are directors or officers of, such other corporation, and any director or directors, individually or jointly, may be a party or parties to or may be interested in any contract or transaction of the Corporation or in which the Corporation is interested; and no contract, act, or transaction of the Corporation with any person, firm, association or corporation shall be affected or invalidated by the fact that any director or directors of the Corporation is a party, or are parties to, or interested in such contract, act or transaction, or in any way connected with such person, firm, association or corporation, and each and every person who may become a director of the Corporation is hereby relieved [fol. 368] from any liability that might otherwise exist, from contracting with the Corporation for the benefit of himself or any firm, association or corporation in which he may be in any way interested.

(d) Subject always to by-laws made by the stockholders, the Board of Directors may make by-laws and from time to

time may alter, amend or repeal any by-laws, but any by-laws made by the Board of Directors may be altered, amended or repealed by the stockholders.

Twelfth. The Corporation reserves the right to amend or change or repeal any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law, or by this Certificate of Incorporation, and all rights conferred upon stockholders herein are subject to this reserved power.

In Witness Whereof, we have made, subscribed and acknowledged this Certificate of Incorporation in duplicate this 22nd day of August, 1932.

E. E. Merino, Francis D. Wells, C. Truman Thomson.

STATE OF NEW YORK,
County of New York, ss:

On this 22nd day of August, 1932, before me personally came E. E. Merino, Francis D. Wells, and C. Truman Thomson to me known and known to me to be the individuals described in and who executed the foregoing Certificate of [fol. 369] Incorporation, and they severally duly acknowledged to me that they executed the same.

P. A. Shay, Notary Public, Kings County. Kings County Clerk's No. 1063. Kings County Register's No. 3454. Certificate filed in New York County. New York County Clerk's No. 1251. New York Co. Register's No. 38808. Certificate filed in Nassau County. Commission expires March 30, 1933. (Seal.) 15252.

STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the original Certificate of Incorporation of Millinery Quality Guild, Incorporated, filed in this department on the 26th day of August, 1932, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this seventeenth day of August, one thousand nine hundred and thirty-six.

Frank S. Sharp, Deputy Secretary of State. (Seal.)

Form 85. 3-17-36-10,000 (2-6454).

[fol. 370] COMMISSION'S EXHIBITS NOS. 29-A AND 29-B

CERTIFICATE OF CHANGE OF NAME

of

MILLINERY QUALITY GUILD, INCORPORATED

to

MILLINERY CREATORS GUILD, INC.

Pursuant to Section Forty of the General Corporation Law

We, the undersigned, David S. Herstein, the president of Millinery Quality Guild, Incorporated, and Lewis G. Meyerson, the secretary thereof, do hereby certify as follows:

1. The name of the corporation is Millinery Quality Guild, Incorporated.

2. The certificate of incorporation of said corporation was filed in the Office of the Secretary of State on the 26th day of August, 1932, and in the Office of the County Clerk of New York County on the 31st day of August, 1932.

3. The name to be assumed by said corporation is Millinery Creators Guild, Inc.

In Witness Whereof, we have made and subscribed this certificate, this 20th day of November, 1935.

David S. Herstein, Lewis G. Meyerson.

[fol. 371] STATE OF NEW YORK,
County of New York, ss:

On this 20th day of November, 1935, before me personally came David S. Herstein and Lewis G. Meyerson to me known and known to me to be the persons described in and who

executed the foregoing instrument and severally acknowledged to me that they executed the same.

(Signed) Dora R. Ziff, Notary Public, Bronx Co.
Bronx Co. Clerk's No. 2. N. Y. Co. Clerk's No. 87.
Term expires March 30, 1937.

STATE OF NEW YORK,
County of New York, ss:

David S. Herstein and Lewis G. Meyerson, being severally duly sworn, do depose and say, and each for himself deposes and says, that he, the said David S. Herstein is the President of Millinery Quality Guild, Incorporated, and he, the said Lewis G. Meyerson, is the Secretary thereof; that they have been authorized to execute and file the foregoing certificate by the votes, cast in person or by proxy, of the holders of record of a majority of the outstanding shares of the corporation entitled to vote on a change of name, and that such votes were cast at a stockholder's meeting held at No. 711-5th Avenue, in the City of New York, Borough of Manhattan, on the 4th day of November, 1935, at 8:00 o'clock P. M., upon notice as prescribed in Section Forty-five of the [fol. 372] Stock Corporation Law.

David S. Herstein, Lewis G. Meyerson.
Sworn to before me this 20th day of November, 1935.
(Signed) Dora R. Ziff, Notary Public, Bronx Co.,
Bronx Co. Clerk's No. 2. N. Y. Co. Clerk's No. 87.
Term expires March 30, 1937.

STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the original Certificate of Change of Name of Millinery Quality, Guild, Incorporated to Millinery Creators Guild, Inc., filed in this department on the 22nd day of November, 1935, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this seventeenth day of August, one thousand nine hundred and thirty-six.

Frank S. Sharp, Deputy Secretary of State. (Seal.)

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[fol. 373] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 9

(Argued December 11, 1939. Decided January 22, 1940)

MILLINERY CREATORS' GUILD, INC. (formerly MILLINERY
QUALITY GUILD, INC.), et al., Petitioners,

VS.

FEDERAL TRADE COMMISSION, Respondent

On petition for review of an order of the Federal Trade
Commission

Petition by Millinery Creators' Guild, Inc., and others to
review and set aside an order entered against them by the
Federal Trade Commission. Order affirmed.

Before Swan, Augustus N. Hand, and Clark, Circuit Judges

Lowell M. Birrell, of New York City, for petitioners.

Martin A. Morrison, Asst. Chief Counsel, of the Federal
Trade Commission, Washington, D. C., for respondent.

Weisman, Quinn, Allan & Spett, of New York City, for
Fashion Originators Guild of America, Inc., Amicus Curiae.

[fol. 374] CLARK, Circuit Judge:

This is a petition by Millinery Creators' Guild, Inc.,
and its members, for review of respondent's cease and de-
sist order directed against petitioners' plan to prevent so-
called "style piracy" of designs in women's hats. Such
plan was found by respondent to be an unfair method of
competition under § 5 of the Federal Trade Commission
Act.

Millinery Creators' Guild, Inc., formerly Millinery Qual-
ity Guild, Inc., is a trade association organized as a stock
corporation under the laws of the State of New York. It
has "members" which the Federal Trade Commission finds
to comprise "a substantial majority" of the manufacturers
of high priced women's hats, or hats which sell at wholesale
for at least eight dollars. Though not stated in its certifi-

cate of incorporation, the admitted immediate purpose of the Guild is to combat the practice known as "style piracy." Original creations designed by members of the Guild and by other high priced milliners are often copied as soon as they appear in public, and the copyists manufacture and distribute their "piracies" at prices far below those charged by the originators. To eliminate this type of competition, the Guild has established a registration bureau, with which any creator of original designs and styles may register his model. Once a model is accepted by the bureau, it is the usual practice of members to accept it as an original design and style, but this is not conclusive, final determination being made by a committee of the Guild. Most of the country's major retail outlets have been approached, and over 1,600 of them have been persuaded to sign "Declarations of Cooperation." These Declarations state the intention of the retail stores not to purchase any hats which are piracies of designs registered with the Guild. Members of the Guild have agreed among themselves not to sell to any retailer who persists in purchasing from the [fol. 375] pirates. One former member of the Guild, Milgrim Hats, Inc., was expelled from membership for failing to abide by these policies.

We believe that the boycott employed by the Guild is one that is unlawful under the Sherman Anti-Trust Act, 15 U. S. C. A. §§ 1, 2. Hence the Federal Trade Commission was justified in concluding that the Guild's method of restraining competition was unfair and in entering its cease and desist order. *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453; *Butterick Publishing Co. v. Federal Trade Commission*, 2 Cir., 85 F. 2d 522, 525.

The anti-trust laws contravene concerted action that unduly confines important areas of competition in price, quality or service. Unless it has this restrictive result, a combination to boycott is not necessarily unlawful. So long as the particular agreement is not intended to and does not have the necessary effect of eliminating beneficial competition, a boycott designed to prevent the commission of an illegal act may be unobjectionable. *United States v. American Livestock Co.*, 279 U. S. 435; *Swift & Co. v. United States*, 196 U. S. 375, 394; *Butterick Publishing Co. v. Federal Trade Commission*, supra; *United States v. Sugar Institute*, D. C. S. D. N. Y., 15 F. Supp. 817, 899,

modified and affirmed 297 U. S. 553. In certain cases group action may permissibly have broader objectives, and a trading exchange may fix rules for trading and forbid dealing with non-members, provided again that there is no perceptible effect on legitimate methods of competition. *Anderson v. United States*, 171 U. S. 604; *Chicago Board of Trade v. United States*, 246 U. S. 231. But it is easy to overstep the line, and a boycott or other concerted action aimed at abolishing socially useful types of competition will not be tolerated. *Eastern States Retail Lumber Dealers' Asso. v. United States*, 234 U. S. 600; *Binderup v. Pathé Exchange*, 263 U. S. 291; *Butterick Publishing Co. [fol. 376] v. Federal Trade Commission*, *supra*; *United States v. Sugar Institute*, *supra* (with cases cited at 15 F. Supp. 900).

The permissible zone of conduct has recently been defined in *Sugar Institute v. United States*, 297 U. S. 553, at 598-599, where the Chief Justice declared: "And coöperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law," but then said, "As the statute draws the line at unreasonable restraints, a coöperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them."

We turn, then, to consider the alleged evil of style piracy, and whether its abolition will eliminate a socially useful type of competition.

What passes in the trade for an original design of a hat or a dress cannot be patented or copyrighted. An "original" creation is too slight a modification of a known idea to justify the grant by the government of a monopoly to the creator; yet such are the whims and cycles of fashion that the slight modification is of great commercial value. The creator who maintains a large staff of highly paid designers can recoup his investment only by selling the hats they design. He suffers a real loss when the design is copied as soon as it appears; the imitator in turn reaps a substantial gain by appropriating for himself the style innovations produced by the creator's investment. Yet the imitator may copy with impunity, and the law grants no remedy to the creator. *Cheney Bros. v. Doris Silk Corp.*, 2 Cir., 35 F. 2d 279.

The Guild emphasizes the immorality of style piracy, and urges that it is an abuse which honest and respectable merchants may permissibly combine to eliminate. But there are larger issues at stake here, and there were larger issues at stake in the Cheney case, than the ethical propriety of copying. The law of unfair competition has a simple [fol. 377] rubric: an ungentlemanly practice will be condemned so long as its condemnation will not injure the consuming public more than the ungentlemanly practice itself. Style piracy was not outlawed in the Cheney case, because to outlaw it would afford a virtual monopoly to the creator of an unpatented and uncopyrighted design. The holder of a patent or copyright has contributed valuable information to the public, and in return he has been granted a limited monopoly; Congress has not yet, however, seen fit to extend the privileges of a monopolist to the inventor of an unpatentable idea. Despite the limited holding of *International News Service v. Associated Press*, 248 U. S. 215, and its strictures against permitting one person to take a "free ride" on the labor and inventiveness of another, we believe that the public interest is best served by limiting the protection afforded an idea to the particular chattel in which it is embodied. *Lewis v. Vendome Bags, Inc.*, 2 Cir., — F. 2d —, December 11, 1939; *Krem-Ko Co. v. R. G. Miller & Sons*, 2 Cir., 68 F. 2d 872; *Sinko et al. v. Snow-Craggs Corp.*, 7 Cir., 105 F. 2d 450, 452.

It is true that concerted activity may be proper to eliminate evils, even though those evils are not violations of positive law, and the fact that the pirate is immune from legal restraint is not of itself sufficient cause to forbid the Guild from devising other means to control him. But here the courts have refrained from enjoining the pirate because they will not support a monopoly in an unpatentable idea. It would be strange to say that the Guild may establish this same monopoly by extrajudicial methods. Style piracy has been lethal in its effect on hat prices, and one of its results has been to make the latest fashions readily available to the lowest purchasing classes. The market of the high-grade originators has been sharply curtailed, and their prices have suffered correspondingly. It is safe to say that the members of the Guild instituted their anti-piracy [fol. 378] campaign to protect their markets and price levels, as well as to improve business morals within the industry.

The testimony of a representative of Peggy Hoyt, Inc., makes this graphically clear.

"Q. Were you asked to become a member of either of these two Guilds?

"A. Yes. * * * Mr. Earl Farrington, who is one of the best grade, what I call a wholesaler, that is, his business is strictly a wholesaler, I have known him for 20 years, cross with him many, many times on the boat. He called me up and suggested this idea about the fact that the millinery business was in the doldrums, you see, something had to be done about it and they had gotten together all of the leading milliners, so-called, to try to create a greater interest in women wearing hats and raising the prices for a better grade milliner because, for instance, the average milliner 15 years ago easily got \$30 for every hat they sold, today the God damn thing sells for \$1.95, I mean, they sell for \$1.95 around town, as a result of which they practically ruin every milliner. * * *

We believe, therefore, that concerted action to eliminate style piracy extends beyond the permissible area of industrial self-regulation. The purpose of the milliners, and the necessary effect of their combination, is to maintain their price structure, and to eliminate a distasteful "evil" which the law nevertheless recognizes to be a socially desirable form of competition. Such an antithesis is unavoidable: what is desirable competition to the consumer may be outlaw traffic to the established manufacturer. But while we maintain the competitive system, a monopoly in an idea, not recognized by positive law, must be jealously scrutinized lest the few are protected at the expense of the many. See [fol. 379] Fly, *Observations on the Anti-Trust Laws, Economic Theory and the Sugar Institute Decisions*: I, 45 *Yale L. J.* 1339, 1348, 1371.

Petitioners point out that the similar plan of Fashion Originators' Guild of America, Inc., applicable to women's ready-to-wear dresses, was upheld in a direct action under the anti-trust laws in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc.*, 1 Cir., 90 F. 2d 556, affirming D. C. Mass., 14 F. Supp. 353, as well as under a state anti-trust law in *Wolfenstein v. Fashion Originators' Guild of America, Inc.*, 244 App. Div. 656, 280 N. Y. S. 361. Apparently these decisions go well to the edge of per-

missible law, at least as we read the decisions of the Supreme Court. And the Filene case carefully distinguishes this proceeding, then pending before the Commission, by pointing out that the Fashion Guild, unlike the Millinery Guild, has no controlling position in the industry, for it contains only a limited number of manufacturers producing less than six per cent of the yearly output of ready-to-wear dresses. Whether this is a valid distinction need not now be determined, since in any event we feel that the present order is justified.

The form of the order seems appropriate to the end in view, namely, the prohibition of further boycott of retailers and manufacturers who have copied members' styles and designs in female haberdashery. It is affirmed and an order will be entered enforcing it.

[fol. 389] UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

MILLINERY CREATORS' GUILD, INC. (formerly MILLINERY
QUALITY GUILD, INC.), et al., Petitioners,

VS.

FEDERAL TRADE COMMISSION, Respondent

Before Swan, Augustus N. Hand and Clark, Circuit Judges

On petition for rehearing

Lowell M. Birrell, Charles A. Van Patten, for the
petitioner.

Per CURIAM:

Petition denied.

T. W. S., A. N. H., C. E. C., c. j. j.

[fol. 390] [Endorsed:] United States Circuit Court of
Appeals, Second Circuit. Millinery Creators' Guild, Inc.
et al., v. Federal Trade Commission. On petition for re-
hearing. Opinion. Per Curiam. United States Circuit
Court of Appeals, Second Circuit. Filed Feb. 9, 1940.
D. E. Roberts, Clerk.

[fol. 391] UNITED STATES CIRCUIT COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of
Appeals, in and for the Second Circuit, held at the United
States Courthouse in the City of New York, on the 9th
day of February, one thousand nine hundred and forty.

Present Hon. Thomas W. Swan, Hon. Augustus N. Hand,
Hon. Charles E. Clark, Circuit Judges.

MILLINERY CREATORS' GUILD, INC. (Formerly MILLINERY
QUALITY GUILD, INC.), et al., Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

A petition for a rehearing having been filed herein by
counsel for petitioners, upon consideration thereof, it is
ordered that said petition be and hereby is denied.

D. E. Roberts, Clerk.

[fol. 392] [Endorsed:] United States Circuit Court of
Appeals, Second Circuit. Millinery Creators' Guild, Inc.
(formerly Milliner Quality Guild, Inc.), et al., v. Federal
Trade Commission. Order. United States Circuit Court
of Appeals, Second Circuit. Filed Feb. 9, 1940. D. E.
Roberts, Clerk.

[fol. 393] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

October Term, 1939

No. 15688

MILLINERY CREATORS' GUILD, INC. (formerly MILLINERY
QUALITY GUILD, INC.), et al., Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

Notice

To:

Lowell M. Birrell, Esq.,
27 Cedar Street,
New York, N. Y.

DEAR SIR:

Please take notice that the proposed decree, a copy of
which is hereto annexed, is being submitted to D. E. Roberts,
Esq., Clerk of the United States Circuit Court of Appeals

for the Second Circuit, at the United States Court House, Foley Square, New York City.

Richard P. Whiteley, Acting Chief Counsel, Federal Trade Commission. Martin A. Morrison, Assistant Chief Counsel, James W. Nichol, Special Attorney, Attorneys for Respondent.

Receipt of a copy of the above notice and draft of decree annexed hereto is hereby acknowledged this — day of January, 1940.

Lowell M. Birrell, Attorney for Petitioners.

[fol. 394] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

October Term, 1939.

No. 15688

MILLINERY CREATORS' GUILD, INC. (Formerly MILLINERY
QUALITY GUILD, INC.), et al., Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

Decree

The petitioners herein, having filed with this Court on, to wit, November 19, 1937, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of April 29, 1937, under the provisions of Section 5 of the Federal Trade Commission Act, and a copy of said petition having been served upon the respondent herein, and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent; and the matter having been heard by this Court on briefs and argument of counsel; and this Court thereafter, on January 22, 1940, having rendered its decision affirming said order of the respondent herein and directing the entry of an order enforcing it—

Now, Therefore, It Is Hereby Ordered, Adjudged And

Decreed that said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of April 29, 1937, be, and the same hereby is, affirmed.

And It Is Hereby Further Ordered, Adjudged And Decreed that the petitioners, Millinery Creators' Guild, Inc. (formerly Millinery Quality Guild, Inc.), Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company, G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company, Oriole Hat Company, John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon [fol. 395] Millinery Company, Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., corporations; Sergin F. Victor, an individual trading as "Serge"; Pauline Kahn, an individual trading as "Mme. Pauline"; Harry Solomons and May F. Solomons, copartners trading as "Harry Solomons and Sons,"—their respective officers, representatives, agents and employees, or any group of such petitioners or their agents, either with or without the cooperation of persons not parties in this proceeding—cease and desist from following a common course of action pursuant to a mutual understanding, plan, or agreement for the purpose or with the effect, directly or indirectly, of lessening competition in interstate commerce in women's hats, by the following methods, or any one or more thereof, to wit:

(1) Soliciting or securing from retail dealers in women's hats any "Declaration of Cooperation" or agreement or understanding whatsoever wherein or whereby said retail dealers undertake or agree to refrain from purchasing, or to refuse to purchase from manufacturers, women's hats that are copies of designs originated and manufactured by petitioners, or women's hats alleged by any of the petitioners to be such copies; or wherein or whereby said dealers undertake or agree to stamp their orders for women's hats with a statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by petitioners, and that the purchasers reserve the right to return any merchandise which is not as warranted.

(2) Failing or refusing to sell their products to retail dealers on the ground or for the reason that such retail dealers purchase or have purchased from manufacturers

women's hats that are alleged by petitioners to be copies of women's hats originated and manufactured by petitioners.

(3) Failing or refusing to sell their products to retail dealers who fail or refuse to stamp their orders for women's hats purchased from manufacturers, with the statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by petitioners, and that the purchasers reserve the right to return any merchandise which is not as warranted.

[fol. 396] (4) Expelling from the membership of said Millinery Creators' Guild, Inc. (formerly Millinery Quality Guild, Inc.), any member or affiliate member on the ground or for the reason that such member or affiliate member solicited the sale of, or sold women's hats to a retailer who failed to sign the agreement set forth in Paragraph (1) hereof, or failed or refused to cooperate in the methods therein set forth.

(5) Utilizing any cooperative means among themselves or with retail dealers to accomplish or carry out the methods prohibited in Paragraphs (1), (2) and (3) hereof.

And It Is Hereby Further Ordered, Adjudged And Decreed that the petitioners as above set forth shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

By the Court:

Thomas W. Swan, Augustus N. Hand, Circuit Judges.

February 19, 1940.

JWN—pfw.

[fol. 397] [Endorsed:] In the United States Circuit Court of Appeals for the Second Circuit. Millinery Creators' Guild, Inc., et al., Petitioner, v. Federal Trade Commission, Respondent. No. 15688. Decree. W. T. Kelley, Chief Counsel for Federal Trade Commission. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 19, 1940. D. E. Roberts, Clerk.

[fol. 398] UNITED STATES OF AMERICA, SOUTHERN DISTRICT
OF NEW YORK

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from I to XXXIII & 1 to 397, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Millinery Creators' Guild, Inc. (formerly Millinery Quality Guild, Inc.), et al., Petitioners, against Federal Trade Commission, Respondent, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 10th day of July, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal.)

[fol. 399] SUPREME COURT OF THE UNITED STATES

No. —

October Term, 1939

MILLINERY CREATORS' GUILD, INC., et al., Petitioners,

vs.

FEDERAL TRADE COMMISSION

Order Extending Time Within Which to File Petition
for Certiorari

On consideration of the application of counsel for the Petitioners,

It Is Ordered that the time for filing petition for certiorari in the above entitled cause be extended for a period of 60 days from May 19, 1940.

Harlen F. Smith, Associate Justice of the Supreme
Court of the United States.

Dated this 20th day of April, 1940.

(8927)

[fol. 400] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 401] Law Offices of Birrell & Dimmock

January 7, 1941.

Honorable Charles Elmore Cropley, Clerk, United States Supreme Court, Washington, D. C.

Re: Millinery Creators' Guild vs. Federal Trade Commission—No. 251

DEAR SIR:

The following portions of the volume called the "Transcript of Record" below, should in our opinion be omitted:

(1) Pages 18 through 21, inclusive. (Answers of Peggy Hoyt Inc. and La Mode Chez Toppe.)

(2) Pages 26 through 28, inclusive. (Answer of Lilly Daché Inc.)

(3) Pages 32 through 36, inclusive. (Answer of Henri Bendel Inc.)

(4) Pages 39 through 46, inclusive. (Motions and orders re dismissal of complaint as to Henri Bendel Inc. and Peggy Hoyt Inc.)

(5) Last 14 lines of page 80 and pages 81 through 97, inclusive. (Testimony of witnesses for Henri Bendel Inc. and Peggy Hoyt Inc.)

(6) Pages 181 through first 12 lines of page 269, inclusive. (Testimony directed solely against parties not before the Supreme Court.)

We are sending a copy of this letter to the Solicitor General and understand that he will write you shortly stating that he does not object to the foregoing omissions.

[fol. 402] We will appreciate it if you will advise us when you have approved said omissions.

Very truly yours, Charles A. Van Patten.

CAVP:MS:

[fol. 403] Office of the Solicitor General
Washington, D. C.

January 9, 1940.

Honorable Charles Elmore Cropley, Clerk, Supreme Court
of the United States, Washington, D. C.

In re: Millinery Creators' Guild v. Federal Trade Com'n,
No. 251

DEAR MR. CROPLEY:

I have received a copy of the letter of January 7, 1941, to you from Charles A. Van Patten, Esq., with reference to the record in the above case.

This tabulation of the material to be omitted, in the event that the Court should decide to eliminate from the record material introduced against other parties before the Federal Trade Commission, is correct. It consists of the following:

1. Pages 18 through 21, inclusive (Answers of Peggy Hoyt Inc. and La Mode Chez Toppe).

2. Pages 26 through 28, inclusive (Answer of Lilly Daché Inc.).

3. Pages 32 through 36, inclusive (Answer of Henri Bendel Inc.).

4. Pages 39 through 46, inclusive (Motions and orders re dismissal of complaint as to Henri Bendel Inc. and Peggy Hoyt Inc.).

5. Last 14 lines of page 80 and pages 81 through 97, inclusive (Testimony of witnesses for Henri Bendel Inc. and Peggy Hoyt Inc.).

6. Pages 181 through first 12 lines of page 269, inclusive (Testimony directed solely against parties not before the Supreme Court).

As I explained in my earlier letter with reference to the record in this case, the Government does not object to the [fol. 404] omission of this material, in view of the stipulation entered into by the Federal Trade Commission, but has referred the question to you, rather than entering into a stipulation, in case the Supreme Court would prefer to have before it the same record which was considered by the Circuit Court of Appeals.

Respectfully, Francis Biddle, Solicitor General.

Endorsed on Cover: File No. 44,600. U. S. Circuit Court of Appeals, Second Circuit. Term No. 251. Millinery Creator's Guild, Inc., (Formerly Millinery Quality Guild, Inc.), et al., Petitioners, vs. Federal Trade Commission. Petition for a writ of certiorari and exhibit thereto. Filed July 18, 1940. Term No. 251 O. T. 1940.

(2203)

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FILE COPY

JUL 18 1940

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1940

No. 251

**MILLINERY CREATOR'S GUILD, INC. (Formerly MILLINERY
QUALITY GUILD, INC.), DAVE HERSTEIN COMPANY, G.
HOWARD HODGE, EDGAR J. LORIE, INC., L. G. MEYERSON,
INC., VOGUE HAT Co., HARRY SOLOMONS and MAY F.
SOLOMONS, co-partners trading as "Harry Solomons
and Sons";**

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT AND BRIEF IN
SUPPORT THEREOF**

FRANCIS L. DRISCOLL,
Counsel for Petitioners,
27 Cedar Street,
New York, N. Y.

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Supreme Court of the United States

October Term, 1940

No.

MILLINERY CREATOR'S GUILD, INC. (Formerly MILLINERY QUALITY GUILD, INC.), DAVE HERSTEIN COMPANY, G. HOWARD HODGE, EDGAR J. LORIE, INC., L. G. MEYERSON, INC., VOGUE HAT CO., HARRY SOLOMONS and MAY F. SOLOMONS, co-partners trading as "Harry Solomons and Sons",

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioners, Millinery Creator's Guild, Inc. (formerly Millinery Quality Guild, Inc.), Dave Herstein Company, G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Vogue Hat Co., Harry Solomons and May F. Solomons, co-partners trading as "Harry Solomons and Sons", respectfully show to the Court as follows:

Statement.

This is a petition for a writ of certiorari to review the decision and order of the Circuit Court of Appeals for the Second Circuit affirming a "cease and desist" order issued

by Federal Trade Commission and directing petitioners to cease and desist from pursuing a mutual plan, understanding or agreement to eliminate style piracy.

The judgment or decree of the Circuit Court of Appeals was entered on February 19, 1940. By order of Mr. Justice STONE of this Court, the time to file this petition for certiorari has been duly extended to and including July 18, 1940.

There were twenty-eight respondents before Federal Trade Commission. The Complaint was dismissed as against three of these. One of the respondents did not appeal to the Circuit Court. Five of the respondents are no longer in business. Eleven of the respondents are no longer associated with the Millinery Creator's Guild, and the other seven are the petitioners to this Court.

Jurisdiction.

Petitioners invoke the jurisdiction of this Court under Sections 346, 347 and 348 of the Judicial Code as amended by the Act of May 20, 1926 c. 347, sect. 13 (b) (44 Stat. 587).

The Facts.

The facts are found in a stipulation at pages 163-173 of the record, together with the evidence theretofore taken (R. pp. 162-163, fols. 486-487). Petitioners' motion to introduce further evidence was denied by the Commission (R. pp. 66-71).

It has been agreed that the testimony appearing after the stipulation was directed exclusively against parties not now before the Court and is not a part of the case against these petitioners (R. pp. 177-178, fols. 531-532).

Petitioner, Millinery Creator's Guild, Inc. (formerly Millinery Quality Guild, Inc.), and hereinafter called the Guild, is a New York stock corporation owned by certain

Parisian milliners (R. p. 163, fols. 488-489). It has, however, acted as the nucleus of a group of highest grade milliners who seek to combat style piracy (R. p. 164, fol. 490). The only restrictions on membership in the group are (1) that a member must be an originator of designs and (2) handle high grade millinery (R. pp. 148-149) (*i. e.* hats selling at over \$5.00 a piece wholesale; see R. p. 167). Protection against style piracy was extended to anyone originating a design irrespective of membership in the group (R. pp. 148-149).

The style element is the most important factor in the sale of ladies' hats (R. p. 167, fol. 500). Petitioners are constantly engaged in the origination of new styles of ladies' hats (R. p. 164, fol. 491) and about 75% of the hats sold by petitioners are hats designed by the firm which sells them (R. p. 164, fol. 492). The other 25% of the hats sold by them are authorized copies of Parisian models (R. p. 164, fol. 492). Petitioners go to great expense in employing designers to create these new styles of hats and in sending these designers to Paris, France and other European cities for inspiration (R. p. 167).

As petitioners produce only highest grade hats, it must be assumed that they produce only a small fraction of the total hats produced in the United States.*

Style piracy and its effects are described by the Circuit Court of Appeals First Circuit as follows: See *Wm. Filene's Sons Co. v. Fashion Originators' Guild et al.*, 90 Fed. (2d) 556, 558.

* In a case note in the Yale Law Journal, May, 1940, page 1290, regarding the decision below, it is estimated that this percentage would not exceed 6%. This is based upon statistics found in Nienburg—"Conditions in the Millinery Industry in the United States" (U. S. Dept. Labor 1939) 21, and an article in Fortune Magazine, January, 1935, pages 50, 53, 54 entitled "\$200,000,000 Worth of Hats". At page 82 of that article the writer estimates that the Guild affiliates produce only a "minute fraction" of the total hats produced in the United States.

"A manufacturer who is a copyist does not send stylists or designers to Paris for inspiration. Instead he copies original designs of other manufacturers, which is accomplished in different ways. Sometimes a copyist buys dresses from retailers who have purchased them from original creators. Sometimes employees of copyists visit the showrooms of original creators and memorize or take notes of the details of the original design there displayed. Sometimes copyists obtain sketches or photographs of successful designs of original creators from agencies which make a business of supplying such sketches and photographs. Sometimes copyists bribe employees of original creators to furnish samples of their employers' original designs or to let them see samples from which they make sketches, and occasionally the original designs are stolen from the original creators.

"Copying destroys the style value of dresses which are copied. Women will not buy dresses at a good price at one store if dresses which look about the same are offered for sale at another store at half those prices. For this reason, copying substantially reduces the number and amount of reorders which the original creators get. With this uncertainty with respect to reorders, original creators cannot afford to buy materials in large quantities as they otherwise would. This tends to increase the cost of their dresses and the prices at which they must be sold.

"Reputation for honesty, style, and service is an important asset of retailers. Copying often injures such a reputation. A customer who has bought a dress at one store and later sees a copy of it at another store at a lower price is quite likely to think that the retailer from whom she bought the dress lacks ability to select distinctive models and that she has been overcharged. Dresses are returned and customers are lost."

The purpose of the association of the Guild was to eliminate these practices from the trade and to that end, the

originators of ladies' hats, who are now before the Court, adopted the following plan:

A registration bureau was established where the originator of a design, whether or not he were a member of the Guild (R. p. 148), could register his designs (R. p. 168). Such a registration, however, was not conclusive as to originality, for in case of dispute, the matter was determined by a Board of Arbitrators (R. p. 168). While the arbitrators were originally persons connected with the Guild, petitioners suggested to the Commission a modification whereby arbitration would be before a board of independent arbitrators (R. p. 70, fols. 208-209), and this suggestion was again pressed in petitioners' briefs in the Circuit Court of Appeals.*

Having established this bureau, the Guild sought and obtained "a declaration of co-operation" from about 1600 outlets throughout the United States (R. pp. 169, 171). This declaration is found at pages 270-271 of the record. Briefly, it states that the firm signing the declaration believes that the elimination of "Style Piracy" will be beneficial to those engaged in the industry and to the public, and that accordingly, the firm signing the declaration will co-operate with the Guild by not dealing in copies of pirated styles and by reserving the right to return to the manufacturers all goods which are pirated.

Petitioners then dealt exclusively with outlets which would agree to so co-operate, and no firm which wilfully violated the tenets of the Guild with regard to "Style

* As the plan was identical with that of Fashion Originators' Guild of America, Inc. except as to the personnel of the board of arbitration, Millinery Creator's Guild offered to adopt the method of selecting arbitrators employed by Fashion Originators' Guild and approved by the Circuit Court of Appeals, First Circuit, in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc.*, et al., 90 Fed. 2nd 556, affg. 14 F. Supp. 353.

"Piracy" was allowed to remain a member of the group (R. pp. 170-171).

The Federal Trade Commission, and the Circuit Court of Appeals, Second Circuit, have held that co-operation to eliminate "Style Piracy" constitutes "unfair methods of competition" within the meaning of Section 5 of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45) in that it is said to violate the Sherman Anti-Trust Act (15 U. S. C. A., Secs. 1 and 2). The Commission has, accordingly, entered a sweeping "cease and desist" order which prohibits both the operation of this plan and any other similar methods of co-operation by Guild members to eliminate "Style Piracy" (R. pp. 62-65); and this has been affirmed by the Circuit Court of Appeals, Second Circuit (109 Fed. (2d) 175) with opinion by CLARK, J.

Questions Involved.

The sole questions involved are:

(1) Whether or not the particular methods of eliminating "Style Piracy" adopted by petitioners are "unfair methods of competition" within the meaning of Section 5 of the Federal Trade Commission Act (15 U. S. C. A. Sec. 45).

(2) Whether or not any voluntary co-operation to eliminate "Style Piracy" would constitute unfair competition within the meaning of Section 5 of the Federal Trade Commission Act (15 U. S. C. A. Sec. 45).

(3) These questions bring up the collateral question of whether or not the methods adopted by petitioners or any other methods that they might adopt to eliminate "Style Piracy" constitute a violation of the Sherman Anti-Trust Act (15 U. S. C. A. Secs. 1 and 2).

Reasons for Granting the Writ.

(1) The decision herein is in conflict with the decision of the Circuit Court of Appeals for the First Circuit in the case of *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556. In that case, Fashion Originators' Guild was using the same method of combating "Style Piracy" as was used by Millinery-Creator's Guild in the case at hand. Wm. Filene's Sons Co. sought to enjoin this as a violation of the Sherman Anti-Trust Act (15 U. S. C. A. Secs. 1 and 2). The District Court for the District of Massachusetts entered a decree in favor of defendant with opinion by BREWSTER, J. (14 F. Supp. 353), which was affirmed by the Circuit Court of Appeals, First Circuit, with opinion by WILSON, J. (90 Fed. (2d) 556).

As the same facts in the one case have been held to violate the Sherman Anti-Trust Act, and in the other case not to violate the Sherman Anti-Trust Act, the two cases defy reconciliation. This has been recognized by the Bar at large. See 49 Yale Law Journal 1290, 1294-1295 and XX Boston Law Review 365 reprinted and commented on editorially in New York Law Journal for May 4 and 6, 1940.

The conflict is further brought out by the fact that Federal Trade Commission has entered a "cease and desist" order against Fashion Originators' Guild of America, Inc. An appeal from the "cease and desist" order in that case has been heard by the Circuit Court of Appeals, Second Circuit, and the decision thereon may be expected shortly.

(2) It is also respectfully submitted that the decision of the Circuit Court of Appeals, Second Circuit, in the case at hand is in conflict with two prior decisions of this Court. In

Appalachian Coals, Inc. v. U. S., 288 U. S. 344, it was held that co-operative effort to eliminate trade abuses where reasonably directed to that purpose, is not a violation of the Sherman Anti-Trust Act; and in *International News Service v. Associated Press*, 248 U. S. 215, it was held that the creative effort in gathering and reporting news would be protected from copyists.

(3) It is also respectfully submitted that the question considered by the Circuit Court of Appeals of the Second Circuit in this case and by the Circuit Court of Appeals for the First Circuit in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556, is an important question under Federal law which, unless the same can be considered to have been decided in petitioners' favor by this Court in the above mentioned cases, has not been and should be settled by this Court.

(4) Finally, we submit that the question presented is of great public interest and importance, affecting vitally a number of large industries in the United States and the purchasing public at large.

WHEREFORE your petitioners respectfully pray that writ of certiorari may issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding such Court to certify and send to this Court on a day designated for its review and determination, a full and complete transcript of the records and proceedings in said United States Circuit Court of Appeals, had in said proceedings entitled in that Court, "Millinery Creator's Guild, Inc. (formerly Millinery Quality Guild, Inc.), Dave Herstein Company, Farrington & Evans Inc., Cooper & Russell Inc., G. Howard Hodge, Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman

Hat Company, Oriole Hat Company, John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company, Gladys & Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Fredericks, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., Sergin F. Victor, an individual trading as "Serge"; Pauline Kahn, an individual trading as "Mme. Pauline"; Harry Solomons and May F. Solomons, co-partners trading as "Harry Solomons and Sons", Petitioners, vs. Federal Trade Commission, Respondent, to the end that this cause may be reviewed and determined by this Court as provided by law and that the said order of the United States Circuit Court of Appeals for the Second Circuit herein may be reversed or modified, and that your petitioners may have such other and further relief as may be just.

MILLINERY CREATOR'S GUILD, INC.
 (formerly Millinery Quality
 Guild, Inc.), DAVE HERSTEIN
 COMPANY, G. HOWARD HODGE,
 EDGAR J. LORIE, INC., L. G.
 MEYERSON, INC., VOGUE HAT
 Co.; HARRY SOLOMONS and MAY
 F. SOLOMONS, co-partners trad-
 ing as "Harry Solomons and
 Sons", *Petitioners,*

By MILLINERY CREATOR'S GUILD, INC.
A Petitioner,

By N. J. GARFUNKEL,
Vice Chairman.

Sgd. Francis P. Driscoll
Counsel to Petitioners.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

N. J. GARFUNKEL, being duly sworn, deposes and says: That he is Vice Chairman of Millinery Creator's Guild, Inc., one of the petitioners in this application for writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that this petition is made in good faith and not for the purpose of delay.

N. J. GARFUNKEL

Subscribed and sworn to before me this 15 day of July, 1940.

SAMUEL BONDY.

Notary Public, Kings County

Clks. No. 62 Reg. No. 2081.

N. Y. Co. Clk's No. 120

Reg. No. 2B 158

Commission expires March 30, 1942

(SEAL)

I hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have examined the foregoing petition for writ of certiorari; that in my opinion said petition is well-founded in law and that the said writs should be issued by this Court.

Sgd. Francis L. Russell

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

An opinion was written by CLARK, J., for the Circuit Court of Appeals, Second Circuit. This opinion is found in the supplemental record of proceedings in the Circuit Court and is reported at 109 Fed. (2d) 175.

Statement of Facts.

The statement of facts and questions presented appear in the petition.

Specifications of Errors to be Urged.

We submit that the Circuit Court of Appeals erred:

(1) By affirming the "cease and desist" order of Federal Trade Commission.

(2) By affirming the finding of Federal Trade Commission that petitioners' plan constituted an undue restraint of trade and a monopoly within the meaning of these terms as used in the Sherman Anti-Trust Act (15 U. S. C. A. Secs. 1 and 2).

(3) By finding that "Style Piracy" is a socially desirable form of competition.

ARGUMENT.

I.

"Style Piracy" is a social evil and has been so regarded by this Court and other courts both state and federal.

The Court below has held that "Style Piracy" is an evil which the law, nevertheless, recognizes as a socially desirable form of competition. The Circuit Court of Appeals

for the First Circuit has, however, held that "Style Piracy" is not only an evil but is a socially undesirable form of competition (*Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556).

We submit that this Court has already passed upon this question. In the case of *International News Service v. Associated Press*, 248 U. S. 215, this Court restrained the piracy of news matter as an unfair method of competition. The Court, in its denunciation of the piracy, stressed the fact that the novelty and freshness of the news matter involved was a most important element in the success of the business, and it decried the practice of allowing one competitor in trade to receive a "free ride", so to speak, from the expenditure of time and money by another competitor. The Court pointed out "In doing this, the defendant, by his acts * * * is taking material that has been acquired by complainant as the result of * * * expenditure of money, labor and skill and which is saleable for money, and the defendant in appropriating it and selling it as his own is endeavoring to reap where he has not sown". Accordingly, an injunction directed against the piracy was affirmed.

The same views have been expressed by the Circuit Court for the First Circuit in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556. The Court below has, however, a diametrically opposite point of view.

It is also noteworthy that the Courts of New York State have reached the same conclusion as was reached by the First Circuit in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556, and by this Court in *International News Service v. Associated Press*, 248 U. S. 215. These decisions were rendered both under the New York State Anti-Trust Act, namely the Donnelly Act (N. Y. Gen'l Bus. Law, Sec. 340), *Wolfenstein v. Fashion Originators' Guild*, 244 App. Div. 656 (1st Dept.,

1935), and as a matter of ordinary equity practice. *Dutton & Co. v. Cupples*, 117 App. Div. 172 (1st Dept. 1907).*

II.

The plan adopted by the Guild is not monopolistic nor does it constitute an undue restraint upon trade.

This case presents no factor of price fixing or price control. As a matter of fact, it has been agreed that the petitioners are in active competition with each other and with other firms in the same line of business (R. pp. 165-166).

Despite the clarity of the stipulation in this regard, the Court below has made the following speculation: "It is safe to say that the members of the Guild instituted their anti-piracy campaign to protect their markets and price levels as well as to improve business morals within the industry". The Court below based this speculation upon an unresponsive remark of a witness who was not only hostile to the Guild, but whose testimony was specifically excluded, by agreement, from the record as against petitioners. This is shown not only by the preamble to the stipulation (R. p. 162, fol. 486), but also by the statement of the attorney for the Commission which reads as follows (R. pp. 177-178):

"Mr. Hogg: Right now, I will say that there will be no further testimony introduced against these Respondents that are entering into this stipulation. However, I propose to introduce evidence directed toward and against these other Respondents that have not entered into this stipulation, namely, Henri

* The conflict with the decisions of this Court, the Circuit Court of Appeals First Circuit and the New York courts is made abundantly clear by excerpts from the case note in XX Boston Law Review page 365 which are quoted in the appendix to this brief.

Bendel, Inc.; Lily Dache, Inc.; Peggy Hoyt, Inc.; and La Mode Chez Tappe, Inc."

The remark in question was made by an officer of Peggy Hoyt, Inc. after counsel for the Commission had thus concluded his case against petitioners.

Thus, the petitioners now before the Court, all of whom entered into the stipulation, were not called upon nor did they even have an opportunity to offer evidence in rebuttal.

It is noteworthy that when the plan of Fashion Originators' Guild (which is the same except for the composition of the arbitration committee) was before the Circuit Court of Appeals, First Circuit, that Court held, after a full hearing, that not only was there no element of price control but the elimination of style piracy would tend to decrease the price of hats. This, the Court stated, was because copying reduces the number of reorders from the original creators and thereby prevents them from buying materials in as large quantities as they otherwise would, *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed (2d) 556, 558.

It should also be noted, in passing, that this Court has repeatedly held that the mere fact that "the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that co-operative endeavor to correct them necessarily constitutes an unreasonable restraint of trade." *Appalachian Coals, Inc. v. U. S.*, 288 U. S. 344, 374. The above statement of this Court has been cited with approval in *Sugar Institute v. U. S.*, 297 U. S. 553, 598; and *U. S. v. Socony Vacuum Oil Co.*, 60 Sup. Ct. 811, 840, 84 L. E. 760, 791 (May 6, 1940).

The fact remains that irrespective of which Circuit Court of Appeals is correct in its speculation as to the possible effect upon price, there is no justification for reading any

subversive purposes into the plan of the business competitors who are here before the Court. These men were not controlling prices. They were merely a group of business competitors who sought to protect themselves from parasites who seek to profit from the effort, expense and skill of those who create what they sell. As has been pointed out by this Court under the dissimilar facts of *Apex Hosiery v. U. S.*, 60 Sup. Ct. 982, 84 Law Ed. 913 (May 27, 1940), it is evident that the anti-trust acts were never intended to cover such a situation as this.

There is no factor of production control present in this case and none has been found to exist. There is nothing in the plan of the Guild to prevent any manufacturer from creating his own designs at his own risk and expense, and any manufacturer who desires to do so can obtain protection irrespective of membership in the Guild (R. p. 148).

Far from injuring the quality of the merchandise, the plan encourages better quality, for it is a well known fact that style is the principal element of ladies' hats (R. p. 167) and that copying such style in inferior grades of merchandise ruins the style of the hat from the point of view of the buyer.

It is thus apparent that none of the abuses which the anti-trust acts were designed to prevent, as outlined by this Court (See *Standard Oil Co. v. U. S.*, 221 U. S. 1, 52), are present in this case.

Finally, we point out that mere numbers or the extent of production of those engaged in a co-operative endeavor do not render the endeavor illegal. *Appalachian Coals, Inc. v. U. S.*, 288 U. S. 344, 374. The number of firms engaged and their production appears to be very small, however. (Yale Law Journal May, 1940 page 1290).

Conclusion.

By reason of the foregoing, it is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that petitioners may have the relief to which they are entitled, and also so that there may be a final determination of the conflict between the decision below and that of the Circuit Court of Appeals, First Circuit, in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc., et al.*, 90 Fed. (2d) 556, and this Court in *International News v. Assoc. Press*, 248 U. S. 215; and to that end writ of certiorari should be granted and this Court should review the decision of said Circuit Court of Appeals for the Second Circuit and finally reverse it.

Respectfully submitted,

Counsel for Petitioners.

APPENDIX.

Excerpts from case note XX Boston Law
Review 365.

"To prevent this design stealing in their industry a group of dress manufacturers created a guild. Original designs were registered, and the members agreed to sell to no store purchasing a stolen design from anyone. They accordingly refused to sell to a large department store. In a suit by this retailer to compel the guild to sell to it the bill was dismissed and the guild and its purpose approved by the Circuit Court of Appeals for the First Circuit. The organization was held not to violate the Sherman Anti-Trust Act,¹ the court saying: 'The Act doesn't preclude the members of an industry in which there are evils disorganizing trade from acting collectively in the elimination of such evils and establishing fair competitive practices.'²

A few years previously the New York State courts had upheld this same organization and its practices under the New York Anti-Trust Laws.³ The court there said: 'The members of these associations had a right to co-operate for the purpose of correcting abuses or to stabilize the industry, provided their endeavor did not amount to an unlawful boycott or constitute an unreasonable restraint of trade. Here there was no intent or power to regulate prices nor even to control production.'⁴

The way thus seemed clear for the various industries to "clean house" and to eliminate practices which the majority of the manufacturers consider abusive and detrimental.

The decision in *Millinery Creators' Guild v. Federal Trade Commission* (109 F. [2d], 175 [C. C. A., 2d], however,

¹ 15 U. S. C. A., secs. 1, 2.

² *Filene's Sons Co. v. Fashion Originator's Guild*, 90 F. (2d), 556 (C. C. A., 1) (1937).

³ Donnelly Act; General Business Law, Sec. 340.

⁴ *Wolfenstein v. F. O. G. of Am., Inc.*, 244 App. Div. 656, 280 N. Y. S. 361 (1935).

creates a disturbing element. To cure this same style piracy existing in the millinery trade a substantial group of manufacturers created their own guild and adopted the same measures as had their brethren in the dress industry. But the Federal Trade Commission issued an order commanding them to desist from such acts, branding them as unfair methods of competition. In upholding this order the court called style piracy 'an "evil" which the law nevertheless recognizes to be a socially desirable form of competition.' "

"The court in *Millinery Creators' Guild v. Federal Trade Commission* (109 F. [2d], 175) [discussed in Part One of this note, printed Saturday] proceeded on the theory that to prevent one from stealing a style or design amounted to the creating of a monopoly in the originator. But is this so? A monopoly, it seems, embraces the idea of concentration of *business* in the hands of a few. This doesn't mean that the whole of a trade must be controlled, but it may refer also to domination of part of a trade.⁵ Could this be taken to include the situation where there are perhaps a thousand different designs of hats in the market at one time, where any individual may present his own design of the same fabric, made by the same machines, by no exclusive process? Can it be said that to grant the originator of one of these designs the exclusive use of it would be giving him any control over the market? Has he any semblance of domination over the millinery industry in respect to either price or production?

⁵ *American Biscuit Co. v. Klotz*, 44 F., 721 (1891); *In re Greene*, 52 F., 104 (1892); *National Fireproofing Co. v. Mason Builders' Ass'n*, 169 F., 259 (1909); *United States v. Keystone Watch Case Co.*, 218 F., 502 (1915).

The court claimed style piracy to be socially beneficial in that it cut prices and made available to the lowest purchasing classes the latest styles. But there is nothing to prevent the manufacturer of lower priced goods from creating his own designs except the desire to let someone else bear the expense and risk. If he were willing to work at it he would be as apt to create a "fancy catching" design as is the manufacturer of higher priced goods. The difference in price is caused by the quality and the workmanship and not by the style."

.

"The court in the Cheney Bros. case⁶ saw fit to restrict this decision" (International News Service v. Assoc. Press, 248 U. S. 215) "to its facts, and this view was followed in the instant case. But the fact remains that the Supreme Court has shown its aversion to piracy and has expressed the opinion that it is an undesirable practice. Nevertheless, the court in the instant case said that a combination to eliminate this practice is an unfair method of competition. This would be an unimpeachable conclusion if the practice indulged in were found, as it was by this circuit court, to be a desirable one. But if the opinion expressed in the International News Service case,⁷ regardless of the decision, is followed it would seem that the court erred in the instant case."

.

"Law is of necessity closely interwoven with social and economic aspects. As ideas and policies change so must eventually the law. It therefore becomes most interesting and pertinent when two courts of equal calibre view and examine the same business practice and attribute to it diametrically opposite social values and economic worth. The Supreme Court must eventually say which judged correctly." J

⁶ 35 F. (2d), 279 (1929).

⁷ 248 U. S., 215, 39 S. Ct., 68, 63 L. Ed., 211 (1914).

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CHARLES FLORENCE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1940

No. 251

MILLINERY CREATOR'S GUILD INC. (formerly
MILLINERY QUALITY GUILD, INC.), DAVE
HERNSTEIN COMPANY, G. HOWARD HODGE,
EDGAR J. LORIE, INC., L. G. MEYERSON,
INC., VOGUE HAT CO., HARRY SOLOMONS
and MAY F. SOLOMONS, co-partners trad-
ing as "HARRY SOLOMONS AND SONS",

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

ON A WRIT OF HABEAS CORPUS TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS.

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35

N. Y. Gen'l Business Law, sect. 340

"1. Every contract, agreement, arrangement or combination whereby

"A monopoly in the manufacture, production, transportation, marketing or sale in this state of any article or product or service used in the conduct of trade, commerce or manufacture or of any article or commodity of common use is or may be created, established or maintained, or whereby

"Competition or the free exercise of any activity in this state in the manufacture, production, transportation, marketing or sale in this state or in the supply or price of any such article, product, commodity, service, transportation or trade practice is or may be restrained or prevented, or whereby

"For the purpose of creating, establishing, maintaining a monopoly or unlawfully interfering with the free exercise of any activity within the state in the manufacture, production, transportation, marketing or sale of any such article, product, commodity or service, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void."

Federal Trade Commission Act

38 Stat. 939 as amended by 52 Stat. 111 (15 U. S. C.

A. sect. 45) _____ 2, 3, 31

"Unfair methods of competition in commerce are declared unlawful." • • •

Judicial Code

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“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * *”

* * *

“Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor. * * *”

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MILLINERY CREATOR'S GUILD INC. (formerly
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HERSTEIN COMPANY, G. HOWARD HODGE,
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Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS.

Statement.

This appeal comes before this Court by certiorari granted the 14th day of October, 1940 (R. p. 189). Jurisdiction was invoked under 44 Stat. 587 (28 U. S. C. A. 348). The order presented for review is an order by the Circuit Court of Appeals, Second Circuit, affirming a Cease and Desist order of the Federal Trade Commission. The opinion below by CLARK, J. is found in 109 F. (2d) 175. The decision is in conflict with the decision of the Circuit Court of Appeals, First Circuit, in *Wm.*

Filene's Sons v. Fashion Originator's Guild, 90 F. (2d) 556, affirming 14 Fed. Supp. 353.

The question presented is as to whether co-operative endeavor by certain milliners to eliminate "style piracy" from the trade is an unfair method of competition under the Federal Trade Commission Act.¹ Decision of that question depends upon whether or not a certain plan for dealing with a trade abuse known as "style piracy" is a violation of the Federal Anti-Trust legislation known as the Sherman Act.²

The Federal Trade Commission and the Court below have decided that the plan is a violation of the Sherman Act (R. pp. 7-16, 185-187, 177-182). The Circuit Court of the First Circuit has held that it is not. *Wm. Filene's Sons Co. v. Fashion Originator's Guild*, 90 F. (2d) 556, affirming 14 Fed. Supp. 353. The Court below has affirmed a sweeping Cease and Desist order as against virtually any method of co-operative endeavor to eliminate "style piracy" (R. pp. 186-187).

It is urged that the Circuit Court of Appeals erred:

- (1) By affirming said "Cease and Desist" order.
- (2) By affirming the finding and conclusion of Federal Trade Commission that petitioners' plan for the elimination of "Style Piracy" is a violation of the Sherman Anti-Trust Act.²
- (3) By finding that "Style Piracy" is a socially desirable form of competition.

Petitioners further urge that neither the plan of eliminating "style piracy" nor the methods to be used in reach-

¹ 38 Stat. 719 amended by 43 Stat. 939, 52 Stat. 111; 15 U. S. C. A. Sec. 45. (Quoted from in Index.)

² 26 Stat. 209 amended by 50 Stat. 693; 15 U. S. C. A. Secs. 1 and 2. (Quoted from in Index.)

ing this result are an unfair method of competition under the Federal Trade Commission Act,¹ or a violation of the Sherman Act² and that the orders below should be reversed. In fact, petitioners urge that it is "style piracy" which is the unfair method of competition and that, accordingly, their efforts are in furtherance of the purpose of the Federal Trade Commission Act.¹

TOPIC A.

Analysis of "Style Piracy".

Women do not buy hats. They buy fashion. It is difficult to find any utilitarian purpose in a large majority of women's hats. They most certainly do not protect the wearer against rain or snow or cold. Virtually their sole function is to make the wearer happy in the thought that she has a beautiful thing which is in fashion. Here the emphasis should be on the word "fashion", for no matter how beautiful, if not in fashion, the hat will not sell. In fact, these whims of fashion conjure up such oddities from a purely esthetic point of view, that women's hats are a constant source of humor to the men of the nation. Nevertheless, as Mr. Justice HOLMES has said,³ "the taste of any public is not to be treated with contempt". Men may joke, but it is this curious quality of "fashion" which sells hats (R. p. 92) and it is, therefore, of great economic value. (See opinion below R. p. 179.)

A woman buying a hat knows the approximate maximum price which she will consider paying and she demands a certain standard of quality. Within these very general limits, price and quality have little bearing upon her selec-

³ *Bleistein v. Donaldson Litho. Co.*, 188 U. S. 239, 252.

tion.⁴ She will buy the hat she thinks to be most "stylish" even though it be more expensive and of poorer quality than the others she sees and even, at times, though it be not particularly becoming or suitable.⁵ She buys fashion not goods.

But while the woman who buys the hat requires that it be in fashion—that is to say, in the newest fashion, she also requires something more. She wants it to be distinctive—that is to say, her hat. It must be different from other hats she sees, so that it will be her hat. But the difference must be subtle for, if it were not of the general style, it would not be in fashion and, therefore, would not be desirable to her.⁶ This quality of distinctiveness can be maintained only through careful distribution. The number of duplications of a hat must not be too great in any particular area for otherwise women will see their hats "walking down the street" which they do not like. On the other hand, immediate and indiscriminate wholesale duplication, particularly when it is accompanied by a lower standard of quality, is lethal. Thus, it is that the "style pirate" destroys the value of the original by destroying its distinctiveness. The battle against the "style pirate" is not so much a battle for customers or markets as it is an effort to prevent him from ruining the goods of the originator at the point which is most vulnerable and, at the same time, of greatest economic value.⁶ To attain this quality of distinc-

⁴ It is stipulated that the "style element is the most important factor in the sale of ladies' hats" (R. p. 92). Worthy in his N. R. A. studies of the millinery industry quotes M. D. C. Crawford, Consumer's Advisor to the Millinery Code to the effect that at least 70% of the value of any piece of outer clothing consists of the intangible in the woman's mind, namely, style—Worthy N. R. A. Works Materials Div. 1936 Bulletin 53, p. 35. Appendix, p. 44.

⁵ For a treatise on this powerful economic factor see Nystrom—"The Economics of Fashion". Ronald Press (1928).

⁶ Nystrom—Fashion Merchandising (Ronald Press, 1932), p. 222.

tiveness in fashion, the originator makes a large investment by employing skilled designers whom he sends to Europe for inspiration and to keep abreast of the news of fashion (R. p. 92) and almost overnight, unless there be protection, the "style pirate" can reap where he has not sowed, and in doing so, destroy the benefits of the skill, labor and the expenditure of the originator.

Before proceeding to define "style piracy" it is well to pause for a definition of a number of terms which are often loosely used and, therefore, confusing. Thus, the phrase "style piracy" is in reality inaccurate irrespective of the appropriateness of the term "piracy". One would more properly say "design pirate". This is because a "style" is a general term referring to a characteristic or distinctive artistic expression, whereas a "design" is a particular or individual interpretation of a "style". "Fashion" is merely a "style" which is accepted and used by people. In order for an object to be "novel" it must be new as compared with all pre-existing things, but to have "trade novelty" it need not be new in the absolute sense—it need only be new as far as the particular trade is concerned. Finally, "originality" means that the design, while not necessarily new in the absolute sense, is new and creative as far as he who thought of it is concerned.⁷

Thus, a "style" of hat might be a Burmese Pagoda motif and this might be in "fashion" in a particular season. Such "style" would not be "novel" in the absolute sense but, if new in millinery, it would have "trade novelty". If a particular designer were to suspend bells from the brim, indent the peak of the pagoda, or make any one of thousands

⁷ The foregoing definitions are from Nystrom—"The Economics of Fashion" (1928) as adopted by Johnston & Fitch in their N. R. A. report on Design Piracy, N. R. A. Work Materials Division (1936) Bulletin No. 52, pp. 11-12. See also *Wm. Filene's Sons Co. v. Fashion Originator's Guild*, 90 F. (2d) 556.

of possible modifications of shape, color or decoration, that would produce a "design" and if the idea were new to him, the hat would have "originality".

It is thus apparent that in this discussion we are primarily concerned with "designs" which have "originality" and it is here that the "design pirate" strikes. He is as free as anyone to create his own designs and, as we will see, his designs will receive the same protection as that of Guild members (R. pp. 93, 80). But instead, he acts as a parasite—thriving upon the efforts of his host, maiming and eventually killing the economic value of the product of the host.

The originating house maintains an expensive organization (R. p. 92). It must not only employ highly paid designers, but it must send them to centers of fashion throughout the world to keep abreast of fashion trends and for inspiration (R. p. 92). It is upon the skill and inspiration acquired through such an organization that the design pirate feeds.

Thus it is that Callman, in his criticism of the decision below,⁸ says of "design piracy" that it is the "intentional systematic appropriation of a business equipment and organization";⁹ and it is against this practice that the Guild members have sought to protect themselves.

Shortly after the decision of the Federal Trade Commission in this case, results of extensive research on the subject by Millinery Stabilization Committee came to our attention and we sought reargument to present this data upon the ways and methods of the "design pirate" as well as the

⁸ Callman—Style and Design Piracy—Journal of the Patent Office Society, August, 1940, pp. 557, 583-584.

⁹ Nystrom likewise emphasizes that design piracy is a systematic way of doing business by appropriation of the business organization of the originator. Fashion Merchandising, pp. 218-219.

effects of his practices (R. p. 38). The Commission, however, refused to receive evidence based upon these studies (R. p. 39).

An excellent description of "design piracy" is contained in the Special Master's report in *Wm. Filene's Sons v. Fashion Originator's Guild*, 14 Fed. Supp. 353. His conclusions, after considering a mass of evidence, are concisely restated by the Circuit Court (90 Fed. (2d) 556, 558) as follows:

"A manufacturer who is a copyist does not send stylists or designers to Paris for inspiration. Instead he copies original designs of other manufacturers, which is accomplished in different ways. Sometimes a copyist buys dresses from retailers who have purchased them from original creators. Sometimes employees of copyists visit the showrooms of original creators and memorize or take notes of the details of the original design there displayed. Sometimes copyists obtain sketches or photographs of successful designs of original creators from agencies which make a business of supplying such sketches and photographs. Sometimes copyists bribe employees of original creators to furnish samples of their employers' original designs or to let them see samples from which they make sketches, and occasionally the original designs are stolen from the original creators.¹⁰

"Copying destroys the style value of dresses which are copied. Women will not buy dresses at a good price at one store if dresses which look about

¹⁰ Substantially the same description is contained in Worthy—N. R. A. Work Materials Div. (1936) Bulletin 52, p. 33. Appendix, p. 40. A more detailed description is found, however, in Nystrom—Fashion Merchandising. Nystrom's summary of the methods of the copyist is:

"Most of the methods are so crude and so frankly dishonest, that if used in taking ordinary merchandise would brand the copyist as a common thief."

the same are offered for sale at another store at half those prices. For this reason, copying substantially reduces the number and amount of reorders which the original creators get. With this uncertainty with respect to reorders, original creators cannot afford to buy materials in large quantities as they otherwise would. This tends to increase the cost of their dresses and the prices at which they must be sold.

"Reputation for honesty, style and service is an important asset of retailers. Copying often injures such a reputation. A customer who has bought a dress at one store and later sees a copy of it at another store at a lower price is quite likely to think that the retailer from whom she bought the dress lacks ability to select distinctive models and that she has been overcharged. Dresses are returned and customers are lost."

A more concise definition, as quoted by Worthy, N. R. A. Work Materials Div. (1936) Bulletin 53, page 32, (Appendix p. 39) from the report of A. C. Johnston, N. R. A. Trade Practices Studies, "Style Piracy Study", is as follows:

"Style Piracy * * * consists in the copying, without authorization from the creator or producer, of ornamental designs for industrial products created or introduced by others, and the selling in competition with such creator or producer, of products embodying the copied designs."

But these definitions fail to mention one important factor in the practice known as design piracy. As Nystrom correctly points out, it is not copying in itself but copying too soon and without remuneration which, when practiced as a business, constitutes design piracy.¹¹ Creators do not object to copying except when the design is fresh and new.

¹¹ Nystrom—Fashion Merchandising, p. 23.

TOPIC B.

The Social and Economic Effects of Style Piracy.

It is indeed fortunate that the Court, in deciding the question here presented, which affects not only a large industry but nearly all the women of the nation, may have the benefit of a thorough and unbiased government report based upon exhaustive research in the millinery industry. This report is by James C. Worthy and a number of collaborators. It is found in N. R. A. Work Materials Division (1936) Bulletin #53. A copy of the section dealing with design piracy is annexed as an Appendix for the convenience of the Court. A further exhaustive study of the subject of design piracy as it affects various industries, including millinery, is by Johnston and Fitch and is found in N. R. A. Work Materials Division (1936) Bulletin #52. Another most significant work on the subject is Nystrom, "Fashion Merchandising (1932)" particularly Chapter 14 entitled, "The Protection of Design in the Fashion Industries" and Nystrom "The Economics of Fashion (1928)" is well worth perusal.

The social and economic factors involved in design piracy and its regulation must be considered from the point of view of the public at large, the retailer, the originator and the "design pirate".

From the point of view of the public at large, it can hardly be urged that a disreputable practice, identical with larceny except for legal technicalities as to the tangibility of the article appropriated, can be a public benefit. There is no dispute as to the unethical nature of the practice.¹²

¹² Johnston & Fitch (N. R. A. Work Materials Div. (1936) Bulletin 52, p. 57) cites this as a point of agreement of all parties. Both the First Circuit and the Court below recognize that the practice is unethical (*Wm. Filene's Sons Co. v. Fashion Originator's Guild*, 90 Fed. (2) 556 and decision below, R. pp. 177-182). See also Nystrom—*Fashion Merchandising*, pp. 218-219.

Aside from the ethical detriment to the public, design piracy produces great economic waste. The rapid mortality of designs due to their reproduction in great volume and consequent loss of distinctiveness causes women's hats to become obsolete long before they have worn out.¹³ While this may, to some extent, benefit the hat dealers and producers, to the public at large it means the unnecessary waste of a vast sum of money.¹⁴

To the woman who demands a high degree of distinctiveness, "design piracy" is a constant source of annoyance, and even the woman who wishes to wear what some fashion leader wears, is furious when she finds the same hat on the heads of a number of her acquaintances.

Furthermore, as Nystrom points out, the wide-spread practice of systematic copying down to the most minute detail, in place of originations upon a theme, deprives the public of the opportunity for a wider range of designs from which to choose, and has a tendency to mislead the public as to values.¹⁵

It is, of course, said that "design piracy" makes fashionable hats available to the masses, but this is of extremely doubtful truth. The "design pirate", against whom the Guild's program is directed, is the one who sells to the large retail outlets. His production is in great volume. It is thus apparent that were the cost of a designing department (less the cost of his copying department) spread over his output, the additional cost per hat, if any, would be negligible. On the other hand, the loss through returns of hats and additional cost of materials because of the small quantities in which an originator must buy his materials,

¹³ Johnston & Fitch N. R. A. Work Materials Div. Bulletin 52, pp. 57-58, 193, XV.

¹⁴ Worthy—N. R. A. Work Materials Div. (1936) Bulletin 53, pp. 35, 38, Appendix, p. 48. Nystrom—Fashion Merchandising, p. 223.

¹⁵ Nystrom—Fashion Merchandising, p. 223.

and because of a lack of reorders, as well as allowances for losses due to piracy, force the originator to charge more for his hats. Thus, from a price point of view, design piracy has nothing to recommend it, and certainly nothing to offset the offense to business decency which it constitutes. The conclusion of both Worthy and Johnston and Fitch, as a matter of fact, is that the presence or absence of control of "design piracy" has a negligible effect, if any, upon price.¹⁶

Finally, as "design piracy" causes a trend toward poorer goods and brings about monotony in design at a given time, it has hampered the growth of creation and design in this country.¹⁷ This is well worth thinking of, particularly at the present time, for while we have depended upon foreign countries, where design is protected,¹⁸ for our inspiration and our fashion trends, we now have the opportunity to make this country a leader in design in the post war world.¹⁹ But, for the art of design to grow and thrive, it must be encouraged and not continually beaten down by systematically destructive practices.

From the point of view of the retailer, it is also harmful. As was pointed out in *Wm. Filene's Sons v. Fashion Originator's Guild*, 90 F. (2d) 556, 558, "design piracy" creates dissatisfied customers and returns of goods. The retailer likewise suffers through the rapid and unpredictable obsolescence of his stock²⁰ for if an item becomes out of date, he is lucky to get rid of it at any price.

¹⁶ Worthy—N. R. A. Work Materials Div. (1936) Bulletin 53, p. 39, Appendix, p. 49. Johnston & Fitch—N. R. A. Work Materials Div. (1936) Bulletin 52, pp. 198-199.

¹⁷ Nystrom—Fashion Merchandising, p. 223.

¹⁸ Nystrom—Fashion Merchandising, pp. 229 *et seq.*

¹⁹ We are all aware of the campaign of Mayor LaGuardia to seize the opportunity to make New York the fashion center of the world.

²⁰ Worthy—N. R. A. Work Materials Div. (1936) Bulletin 53, p. 35, Appendix, pp. 43-44.

To the originator of designs, "design piracy" is, of course, disastrous. He must invest large sums in hiring expert designers and in financing their trips to Europe to observe fashion trends and for inspiration (R. p. 92) only to have the benefits of his industry evaporate because of the loss of the quality of distinctiveness through endless and uncontrolled duplication. Because of piracy, it is virtually impossible for any creator to so much as recover his costs, much less make a net profit.²¹ It is on re-orders that he must depend to stay in business and these are not forthcoming after the "pirate" has seriously commenced his work. The fact that there are but seven of the twenty-seven firms named as defendants in this action, now in business after only about four years, speaks for itself. This, although the defendants are among the recognized leaders of their trade (R. p. 92).²²

Finally, as to the "pirate" himself, it would seem that he feels that the practice is economically beneficial to him, for otherwise he would not do it. But there is even doubt that he is benefited. In the silk industry, where a highly effective plan of combating "design piracy" has been in effect for a number of years, the former "pirates" found that when they were compelled to abandon the practice, they were not hurt but, on the contrary, were benefited.²³ This is explained by Nystrom as follows:²⁴

"The ignorance of the copyist may be seen in his belief that it is the design rather than the style that is in fashion, and in his attempt to copy the design

²¹ Nystrom—Fashion Merchandising, p. 218.

²² Worthy estimates that the trade mortality in the Millinery Industry is about 20% per annum (N. R. A. Work Materials Div. Bulletin 53, p. IX).

²³ Johnston & Fitch—N. R. A. Work Materials Div. (1936) Bulletin 52, p. 41.

²⁴ Nystrom—Fashion Merchandising, p. 222.

as precisely as possible, quite overlooking the fact that most consumers, even though wishing to be in fashion, insist on having individuality and variation in that fashion. By launching exact copies of a successful design on the market the demand for that design is quickly exhausted and large numbers of consumers desiring something different are left unsatisfied. Thus the copyist not only destroys the market for the originator but also for himself as well."

We have considered these broad aspects of design piracy in some detail because on our failure to do so below the Circuit Court hazarded various unfounded speculations upon the subject. Thus, while the Court recognized that "style piracy" is an "evil" it referred to it as "a socially desirable form of competition". This statement has not only been vigorously criticized in the reviews of the opinion,²⁵ but is diametrically opposed to the conclusions of the Circuit Court of Appeals First Circuit where, after reviewing the subject thoroughly, the conclusion was that the practice was socially undesirable. *Wm. Filene's Sons v. Fashion Originator's Guild*.²⁶ In fact, the opinion of the Referee in that case²⁷ went so far as to say:

"That the aims of the Guild were calculated to benefit rather than prejudice public interest, I think is not open to debate."

The views of the First Circuit are in accord with those of this Court *International News v. Associated Press*,²⁸ and of the New York Appellate Division, First Department

²⁵ XX Boston L. Rev. 365 reprinted N. Y. Law Journal May 4 and 6, 1940; XXII Journal of Pat. Off. Soc. 572-573; 49 Yale Law Journal 1290.

²⁶ 90 F. (2d) 556.

²⁷ 14 Fed. Supp. 353.

²⁸ 248 U. S. 215.

*Wolfenstein v. Fashion Originator's Guild.*²⁹ Exhaustive studies under N. R. A. reach the same conclusion as reached in the cases just cited, namely that "style piracy" is a most undesirable form of competition,³⁰ and it is noteworthy that the Federal Trade Commission has itself condemned the practice of "design piracy",³¹ as do the leading magazines such as *Good Housekeeping* and *Ladies Home Journal*.³²

TOPIC C.

What Form of Protection Is Adaptable to the Evil?

While undoubtedly there has always been a certain amount of design piracy, the situation did not become serious until a few years ago.³³ This is because modern methods of mass production prior to that time did not constitute a large factor in the production of millinery. Thus, prior to that time, the occasional theft of a design did not do any real or extensive harm. It was when the pirated idea began to be broadcast into thousands of models practically overnight, that the subject became one for serious consideration.³⁴ It then became necessary for industries, whose stock in trade was fashion, to look to the problem of protection.

²⁹ 244 App. Div. 656.

³⁰ Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin 52, Worthy, N. R. A. Work Materials Div. (1936) Bulletin 53. See Appendix.

³¹ See Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin 52, pp. 75-76 referring to the Trade Practice Conferences of the Federal Trade Commission of June 30, 1933.

³² Johnston & Fitch, N. R. A. Work Materials Div. Bulletin 52, p. 43.

³³ Worthy N. R. A. Work Materials Div. (1936) Bulletin 53, p. 32, Appendix, p. 39.

³⁴ See Worthy "The Millinery Industry" N. R. A. Work Materials Div. (1936) Bulletin 53, p. 32, Appendix, p. 39, and Johnston & Fitch N. R. A. Work Materials Div. (1936) Bulletin 52, p. IX.

The common law gave little promise. The law of unfair competition had been developed throughout centuries under essentially different conditions and while the courts seemed to be gradually getting away from the theory that there must be a "palming off" to afford relief,³⁵ so rooted in the common law was that idea of "palming off", that uniform protection by the courts could hardly be looked for. But there are other difficulties under the common law. It is often practically impossible to determine who the pirate is, so as to bring action against him. Injunction was virtually useless not only because of the expense involved, but because the whims of fashion are so fleeting that before any effective relief could be obtained, the design under consideration would no longer have economic value.³⁶ This is particularly true because of the well known hesitancy on the part of the courts, particularly in this field, to grant injunctions *pendente lite*. In other words, the damage was done long before relief could be secured.

Similarly, the copyright and patent laws were inadequate to meet the situation. It had been held that neither the ordinary patent laws or the copyright laws applied.³⁷ Nor had the design patent law, enacted many years ago, been framed to deal with this particular problem. The principal difficulty under the design patent law was the time element. It is estimated that the least possible time to obtain a design patent is about nineteen days minimum, which is seldom realized, the average time being one hundred days³⁸ and if the design were published, in use or on

³⁵ Nimms—Unfair Competition and Trade Marks (3rd Ed.), pp. 5-6, 36, 779.

³⁶ Nystrom—Fashion Merchandising, p. 23.

³⁷ *Kemp & Beatty v. Hirsch*, 34 Fed. (2nd) 291.

³⁸ Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin 52, p. 77.

sale within two years of the application, the patent could not be granted.³⁹ The ephemeral nature of millinery designs would make such delays deadly from an economic point of view, inasmuch as the style life in the industry is only for a season.⁴⁰ And even after such delays there would be many long and costly interference proceedings.⁴¹

Another factor is that hundreds of thousands of designs may be created and only a very few of them may take. The creator generally will not know which of the designs will take before he has tried them on the buyers and the public, and it is upon his reorders that he must depend to stay in business.⁴² Obviously, the prohibition against publication, use or sale prior to application for the design patent, when coupled with the expense of obtaining patents upon many designs that will never go into production or receive reorders, and also the delay involved, made the design patent law wholly inadequate.⁴³

The further difficulty under the design patent law was that this law, being a patent law, required invention and the term invention was very strictly interpreted by the courts.⁴⁴ The designs of which we speak have originality and trade novelty, but it is doubtful that they could comply with the definition of the term "invention" which requires

³⁹ *Anderson v. Eiler*, 50 F. 775.

⁴⁰ Worthy—N. R. A. Work Materials Div. (1936), Bulletin 53, p. 19.

⁴¹ Johnston & Fitch N. R. A. Work Materials Div. Bulletin 52, p. 82.

⁴² Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin 52, p. X.

⁴³ See *Cheney Bros. v. Doris Silk Corp.*, 35 Fed. (2d) 279, Sec. ond Circuit 1929, and Johnston & Fitch N. R. A. Work Materials Div. (1936), Bulletin 52, pp. 186-187.

⁴⁴ *A. C. Gilbert v. Shemitz*, 45 Fed. (2nd) 98.

that the thing be absolutely new as compared to all pre-existing things.⁴⁵

Finally, the difficulty on the part of the Courts to appreciate the fine distinctions which, though they may be subtle, are of great economic value, has caused them to be reluctant to enter decrees affording protection.

This situation resulted in there being no effective protection afforded by recourse to the Courts.⁴⁶ If protection were to be secured, it was apparent that it would have to be either through an expansion of the common law to meet existing conditions, a broadening of the copyright laws, or through some sort of voluntary co-operation.

Little hope for effective and immediate alleviation of the difficulties of the designers could be expected through gradual development of the common law. It is a well known fact that the development of the common law is a slow process and generally well behind the development of the factors which bring about its development. It is little solace to the man whose business is being ruined today to tell him that throughout the course of the years he may hope that a sufficient body of common law may be built up, possibly by his own efforts and expense, which will, in the end, afford him the protection which is his immediate need.

Furthermore, it is difficult to imagine how the courts could ever afford effective and prompt relief. The first difficulty would be in determining the identity of the design pirate. There would then be the necessary delays of the

⁴⁵ It should be noted that the United States is the only country which requires "invention" in industrial designs, in other countries "trade novelty" suffices. (Johnston & Fitch N. R. A. Work Materials Div. (1936) Bulletin 52, pp. 128-129.)

⁴⁶ For a summary of the difficulties which made the courts and other government agencies inadequate to handle this problem see Johnston & Fitch N. R. A. Work Materials Div. (1936) Bulletin 52, pp. XI and XII, and see 49 Yale L. J. 1290, 1292-1293, and also Nystrom—Fashion Merchandising, pp. 228 *et seq.*

judicial process and the attendant expense. The multiplicity of actions required where more than one design pirate were involved would also be a definite deterrent and, finally there would be the probable unfamiliarity of many judges with the subtleties of design. Thus, no reasonable hope could be expected in that quarter.

Because of the fundamental requirement of invention as strictly defined by the courts, the patent laws seem much less appropriate than the copyright laws as, in the latter, originality rather than invention is a controlling factor.⁴⁷ But even in the copyright field, the chance for a prompt and effective relief seemed meager. All of the difficulties just mentioned, with regard to the common law remedies, would be present under any system of copyright which might be devised. And in addition, the labeling of the goods, as required by the copyright law, would be most burdensome. However, the practical considerations would perhaps present the greatest difficulty. The registration of the hundreds of thousands of design in all of the various industries wherein design is a factor would place an intolerable burden upon the administrative branch of the government, and the fact that the courts would be forced to render decision after decision involving the fine points of the art of design would place an intolerable burden also upon the courts.

While various bills have been introduced in Congress intended to curb the design pirate, the foregoing considerations restricted greatly their actual value. It thus appeared, and now appears that the only effective method of protection would lie in the industry co-operating to clean its own house and not ask the courts to do so for it.

Johnston & Fitch in their N. R. A. studies, after recognizing the fact that in matters of design the commercial

⁴⁷ Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin 52, pp. 97, 208.

value lies in "trade novelty", came to the conclusion that it was only through voluntary efforts that the subject of design piracy could be met. Their words on this subject were (p. 208):

"The *sine qua non* of a successful plan based upon 'trade novelty' is the existence of a tribunal having thorough knowledge of the products of the trade and the power to make decisions acceptable by the parties concerned or capable of backing by legal sanction. In general, such a plan is adaptable only to voluntary efforts toward design control. It is wholly unadaptable to a permanent legal control."

This brings us to the plan under which the Millinery Creators' Guild set about to protect themselves.

TOPIC D.

A Description of the Petitioners and Their Plan to Eliminate the Practice of Style Piracy from the Millinery Industry.

These facts are contained in a stipulation appearing at pages 89-96 of the record.

The millinery firms who collaborated in the plan to eliminate design piracy were originators of the leading styles in the highest grade women's hats, which are sold at not less than \$5.00 to \$8.00 per hat (R. p. 92). As the recognized leaders in the field (R. p. 92) they employ highly paid designers who journeyed to Paris and other fashion centers of the world to observe the style trends and secure models which form a style basis for many of the designs they create (R. p. 92). About seventy-five per cent. of the hats which these houses produced were "originations" and about twenty-five per cent. were copies of French hats (R. p. 90);

made pursuant to agreement with the French designers.⁴⁸ Their preeminence in the field of millinery design is so well known that "high grade retail dealers and outlets, both in New York and elsewhere in the United States, in order to offer a full line of ladies' hats, would normally be required to procure at least some of their models from" them (R. p. 92). Proceedings were brought by the Federal Trade Commission against twenty-seven of such leading style houses. Three were able to convince the Commission that they had not been a party to the plan. The business mortality of style houses is such that seven of them failed since the commencement of the proceedings in 1936.⁴⁹ A number of defendants below have since resigned from the Millinery Creators' Guild or have not appealed so that there are now before the Court six style houses.

It is agreed that all of these firms are in active competition one with another and with the other members of the industry (R. pp. 90, 91). In fact, it would be difficult to find an industry in which competition is fiercer. Mr. Worthy's conclusions, at about the time that this proceeding was commenced by the Federal Trade Commission, and three years after the co-operative endeavor had been in effect, well illustrate this:

" 'Cut throat' is a mild term when applied to the competition existing in this industry. Possessed of little individual bargaining ability, manufacturers have no control over their own prices—let alone the price structure of the industry. They are forced to take what they can get from their distributors, and

⁴⁸ We understand that with continental Europe closed to the American designers because of the war, they now bear the entire burden of creating new designs.

⁴⁹ Worthy states that this trade mortality is about 20% per annum (N. R. A. Work Materials Div. (1936) Bulletin 53, p. IX).

forced to pay for their materials what their supply houses dictate. The producer is fortunate if he can cover his costs of production. The rate of industrial mortality—about 20 percent per annum—indicates that in many instances he does not.”⁵⁰

Such is the nature of the competition, however, that in the matter of capturing a particular purchaser, the originator of the design will not usually be in competition with the design pirate.⁵¹ This is because in the millinery industry there are definite natural price fields⁵² and the originators whom we represent sold on’y in the highest bracket. The effect of the piracy is the destruction of the economic value of the design to the originator rather than any weaning away of a customer.

Thus as Johnston & Fitch summarize the situation at page X of said report:

“Articles bearing copied designs and on sale at lower prices than the originals quickly destroy the distinctive character of the originals. Quality or other differentials are not always evident to consumers. The original manufacturer, as a consequence, shortly finds his articles unsaleable and must turn to something else. His profits or losses on the design depend largely upon the number of items he was able to dispose of before the copy appeared and the price he was able to get, these being affected by the reluctance of distributors to place substantial orders under copying conditions, by markdowns or losses on stocks on hand, and by returns from dealers.”

The plan by which the originators of the designs sought to protect themselves was through co-operation with Millinery Creators’ Guild (formerly Millinery Quality Guild,

⁵⁰ N. R. A. Work Materials Div. (1936) Bulletin 53, p. IX.

⁵¹ 49 Yale Law Journal 1290, 1291.

⁵² Johnston & Fitch N. R. A. Work Materials Div. (1936) Bulletin 52, p. 16.

Inc.), a stock corporation, the stock of which was owned by certain French milliners (R. pp. 89-90). They asked for and obtained from 1600 retail outlets throughout the United States a so-called declaration of co-operation (R. p. 93), a copy of which is found at page 102 of the record, and an agreement of co-operation was signed by those retail outlets (R. p. 93) which agreement is found at page 166A of the record.

The essence of this declaration and agreement was to the effect that the retailer approved the elimination of "style piracy", and would not knowingly deal in pirated goods. In order to protect the retailer from possible embarrassment it was provided that he would stamp on all of his orders a legend to the effect that his supplier guaranteed that the hats were not copies and that the right to return any merchandise, which was not as warranted, was reserved.

As we have said, the members of the group are in active competition with one another (R. pp. 90, 91). Neither in the plan nor in practice is there any element of price fixing allocation of markets, or pooling of designs. Each design house merely hoped to enjoy its own products without having them ruined by plagiaristic practices of others.

In order to determine whether or not a particular hat was a copy or not, it was necessary that a Registration Bureau be set up, and this was done (R. p. 93). In this connection, it is most important to note that anyone who produced an original design, irrespective of membership in the Guild, was permitted to register and obtain such protection as the Guild could give (R. pp. 93, 80) and that mere registration was not decisive as to originality (R. p. 93).

There was no pooling of designs or mutual exchange. It was each firm for itself and let competition take the hindmost, irrespective of membership in the Guild.

Any and all disputes with regard to the subject of whether a hat was an original or merely a copy of one of the registered hats was submitted to a Board of Arbitrators composed of experts (R. p. 93). Originally the Arbitration Board was composed of Guild members. However, inasmuch as they might be considered to be interested parties, the Guild proposed to the Federal Trade Commission that this be changed so as to follow the plan of Fashion Originators' Guild (R. p. 38). Under that plan, which is set forth in *Wm. Filene & Sons Co. v. Fashion Originators' Guild of America, Inc.*, 90 F. (2d) 556, at page 562, the Board of Arbitration consisted of a committee of retailers.⁵³ If the alleged violator were not satisfied with the particular committee, he could demand another committee, and if still dissatisfied, he could select one member of the Board, the Guild select the second member and those two would select a third. The merit in this plan lay in the fact that the Arbitration Board would consist of experts who were not under control of either those who were cooperating to eliminate "style piracy", or of the style pirate group.

In closing this topic we point out that petitioners are interested only in evolving an effective and fair plan to deal with the deadly practice of design piracy. The details of the plan are thus immaterial to them provided they are permitted to meet the essentials. They are not only glad to adopt the arbitration procedure of Fashion Originators' Guild, or any other helpful provisions of that plan but will be glad to adopt any suggestions of Federal Trade Commission or the Courts which will improve upon the plan to

⁵³ The plan is more fully discussed in the Master's Report quoted in 14 Fed. Supp. 353, and in the Brief on the companion case—*F. O. G. A. v. Fed. Trade Com. No. 537*.

protect themselves against design piracy. However, the sweeping terms of the Cease and Desist order, as it now stands, forbid any cooperative measures of regulation whatsoever (R. pp. 186-187).

POINT I.

It is not the Plan of the Guild, but "Design Piracy" itself, which is unfair competition.

This Court has very definitely held that it will not permit one business concern to live on the enterprise, skill, labor and money of another.

The principal case is *International News Service v. Assoc. Press.*⁵⁴ There the Associated Press sought and obtained an injunction against International News Service upon the following facts:

The parties were competitors in the gathering and distribution of news, Associated Press maintained a far flung and costly organization for the gathering of news. This news was published upon bulletin boards in eastern cities and published in newspapers. It was then telegraphed to the western cities. International News adopted the practice of taking the news from Associated's bulletin boards and early papers and telegraphing it out west. There the news would reach International's newspapers in time for it to appear in the same editions as it would appear in Associated's newspapers. The news was not copyrighted or even subject to copyright. It depended for its value on its freshness, and when fresh was a valuable commodity.

⁵⁴ 248 U. S. 215.

The analysis of this Court was that while the news itself was common property as between the news gatherer and the world at large, the business organization by which it was gathered was not public property and could not be lawfully appropriated by a business competitor.⁵⁵ As the Court put it:

"The question here is not so much the rights of either party as against the public but their rights as between themselves. See *Morison v. Moat*, 9 Hare, 241, 258. And although we may and do assume that neither party has any remaining property interest as against the public in uncopyrighted news matter after the moment of its first publication, it by no means follows that there is no remaining property interest in it as between themselves. For, to both of them alike, news matter, however little susceptible of ownership or dominion in the absolute sense, is stock in trade, to be gathered at the cost of enterprise, organization, skill, labor, and money, and to be distributed and sold to those who will pay money for it, as for any other merchandise. Regarding the news, therefore, as but the material out of which both parties are seeking to make profits at the same time and in the same field, we hardly can fail to recognize that for this purpose, and as between them, it must be regarded as *quasi* property, irrespective of the rights of either as against the public."

International News had raised the point, however, that irrespective of any rights prior to publication, the publication of the news deprived Associated Press of the right to object to others making use of it. The Court showed that that argument was unsound, stating that the doctrine of

⁵⁵ 248 U. S. 215, 235, 236.

publication applies only as between the producer and the public at large and does not apply as between two business competitors, one of whom is appropriating the stock in trade of the other (pp. 239-241).

“The fault in the reasoning lies in applying as a test the right of the complainant as against the public, instead of considering the rights of complainant and defendant, competitors in business, as between themselves. The right of the purchaser of a single newspaper to spread knowledge of its contents gratuitously, for any legitimate purpose not unreasonably interfering with complainant’s right to make merchandise of it, may be admitted; but to transmit that news for commercial use, in competition with complainant—which is what defendant has done and seeks to justify—is a very different matter.”

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“publication by each member must be deemed not by any means an abandonment of the news to the world for any and all purposes, but a publication for limited purposes; for the benefit of the readers of the bulletin or the newspaper as such; not for the purpose of making merchandise of it as news, with the result of depriving complainant’s other members of their reasonable opportunity to obtain just returns for their expenditures.”

But the *ratio decidendi* of the case is most clearly shown in the following excerpt from the opinion of the Court (pp. 239-240):

“In doing this defendant, by its very act, admits that it is taking material that has been acquired by complainant as the result of organization and the expenditure of labor, skill, and money, and which is salable by complainant for money, and that defendant in appropriating it and selling it as its own is endeavoring to reap where it has not sown, and by disposing

of it to newspapers that are competitors of complainant's members is appropriating to itself the harvest of those who have sown. Stripped of all disguises, the process amounts to an unauthorized interference with the normal operation of complainant's legitimate business precisely at the point where the profit is to be reaped, in order to divert a material portion of the profit from those who have earned it to those who have not; with special advantage to defendant in the competition because of the fact that it is not burdened with any part of the expense of gathering the news. The transaction speaks for itself, and a court of equity ought not to hesitate long in characterizing it as unfair competition in business.

"The underlying principle is much the same as that which lies at the base of the equitable theory of consideration in the law of trusts—that he who has fairly paid the price should have the beneficial use of the property. Pom. Eq. Jur., Section 981. It is no answer to say that complainant spends its money for that which is too fugitive or evanescent to be the subject of property. That might, and for the purposes of the discussion we are assuming that it would, furnish an answer in a common-law controversy. But in a court of equity, where the question is one of unfair competition, if that which complainant has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience."

This case seems to be the only decision of this Court which deals squarely with this subject at hand. The decision has, moreover, stood as authority for the propositions stated

by the opinion of the Court for a matter of over twenty years.

The analogy to the facts of our case could hardly be more perfect. As one critic of the decision below put it, "They" (millinery designs) "are the *news of fashion*".⁵⁶

Mr. Callman devotes the closing part of his article (*supra*, pp. 582-586) showing point by point the identity of the cases. Thus, he shows how both news and these designs are generally uncopyrightable and how the "evil" in each case consists in the unauthorized use of another's business organization. The Associated Press maintained a staff which gave them world coverage on news. Similarly, the Guild members, at great expense, sent their designers to the fashion centers of the world to keep in touch with the "news of fashion" (R. p. 92). He then shows how the vital thing of value in both news and millinery is the quality of freshness. This identity is likewise recognized in another criticism of the decision below, wherein the writer refers to the decision below as a "disturbing element" in a well settled field.⁵⁷

The two conflicting Circuit Court of Appeals decisions on the subject would both seem to recognize the identity in principle. In *Wm. Filene's Sons Co. v. Fashion Originators' Guild*⁵⁸ the Court based its decision largely upon the *International News v. Associated Press* case,⁵⁹ and in the decision below no attempt to distinguish was made (R. p. 180). The Court there merely stated that "Despite the limited holding of *International News Service v. Associated Press*⁵⁹ and its strictures against permitting one person to take a 'free

⁵⁶ Callman—Style & Design Piracy Journal of U. S. Pat. Off. Soc. Aug. 1940, Vol. XXII, p. 583.

⁵⁷ XX Boston Law Rev. 365, reprinted in N. Y. Law Journal of May 4 and 6, 1940.

⁵⁸ 90 F. (2d) 556.

⁵⁹ 248 U. S. 215.

ride' on the labor and inventiveness of another, we believe that the public interest is best served by limiting the protection afforded an idea to the particular chattel in which it is embodied." Surely the characterization "limited holding" is solely the Second Circuit Court's own characterization, for this Court made it abundantly clear that it was deciding upon broad principles of equity and it did not, nor has it since, ever limited the effect of its decision, nor abandoned those principles.

As a matter of fact, this Court was required to take a far stronger position in the *Associated Press* case⁵⁹ than is necessary in this case. There the Court was asked to and did enjoin the "piracy", whereas our clients merely ask to be left alone.

Finally, while *Associated Press v. International News Service*,⁶⁰ is considered as a milestone in the law of unfair competition, it by no means stands alone. We say "milestone" inasmuch as this is one of the first cases to recognize that "palming off" is merely a type of unfair competition and not an exclusive definition.⁶⁰ In a case in the New York Appellate Division, First Department (1907) precisely the same result was reached. *Dutton & Co. v. Cupples*, 117 App. Div. 172. There the plaintiff had, for some years, published an uncopyrighted anthology of unique and artistic design, profusely illustrated by plaintiff's artists and with illuminated capitals. Defendant, by a photographic process, was marketing exact copies of plaintiff's work. A suit was brought for an injunction. In reversing an order denying the motion for an injunction *pendente lite*, the Court stated: "The right to injunctive relief in such a case is too firmly established to require citation of authorities" (p.

⁵⁹ 248 U. S. 215.

⁶⁰ Callman "Style and Design Piracy", *Journal of Pat. Off. Soc.* Aug. 1940, Vol. XXII, pp. 557, 580.

176). In a concurring opinion Mr. Justice INGRAHAM explained the case with much force upon precisely the same grounds as were relied upon by this Court in *Associated Press v. International News*.⁵⁹ There is also, of course, *Wm. Filene's Sons Co. v. Fashion Originator's Guild*, 90 Fed. (2d) 556 in the First Circuit and a companion case in the Appellate Division, First Department. *Wolfenstein v. Fashion Originator's Guild*, 244 App. Div. 656 (1936). See also *Natl. Tel. News v. Western Union*, 119 Fed. 294 (C. C. A. 7—1902); *Associated Press v. KVOB, Inc.*, 80 F. (2d) 575 (C. C. A. 9—1935) reversed on purely jurisdictional grounds 299 U. S. 269; *Pittsburgh Athletic Co. v. K. Q. V.*, 24 Fed. Supp. 490 (W. D. Penn 1938); *Fanotopia Ltd. v. Bradley*, 171 Fed. 951 (E. D. N. Y. 1909); *Twentieth Century Sporting Club v. Transradio Press Service*, 165 Misc. 71; and *Fisher v. Star Co.*, 231 N. Y. 414. In conflict are the cases in the Second Circuit which presume to limit the *Associated Press* case to its own specific facts, and in doing so admit that this leaves a "hiatus in completed justice". *Cheney Bros. v. Doris Silk Corp.*, 35 F. (2d) 279; *Millinery Creator's Guild v. Federal Trade Commission* (R. p. 177), and *Fashion Originator's Guild v. Federal Trade Commission*, 114 F. (2d) 80.

⁵⁹ 248 U. S. 215.

POINT II.

The Plan of the Guild does not violate the Federal Trade Commission Act or the Anti-Trust Acts.

The Federal Trade Commission Act⁶¹ simply declares unlawful, unfair methods of competition. As the sole purpose of the plan of the Guild is to combat a practice which the Commission itself has condemned as unfair⁶² and which was also condemned as unfair in some seventeen codes under N. R. A.,⁶³ it is difficult to see how the plan could amount to a violation of the Federal Trade Commission Act.⁶¹

The sole reason assigned by the Court below was that the plan was said to violate the Sherman Act.⁶⁴ The basic question is, therefore, whether or not this plan violates the Sherman Act,⁶⁴ or in other words: Does it constitute a conspiracy in restraint of trade or a monopoly?

As Justice BRANDEIS once put it, however, virtually any contract or agreement is in some respect a restraint of trade⁶⁵ and yet not all agreements between two or more parties are within the prohibition of the Sherman Act.⁶⁴ Thus, the question becomes even narrower so far as restraint of trade is concerned. A proper analysis of the question is, therefore, this: Does the plan present any of the evils which the Sherman Act was designed to prevent?⁶⁶ We think that the answer is clearly, no.

⁶¹ 15 U. S. C. A. 45; 38 Stat. 719, 43 Stat. 939, 52 Stat. 1028.

⁶² Federal Trade Conference of Federal Trade Commission, June 30, 1933.

⁶³ Johnston & Fitch—N. R. A. Work Materials Div. (1936), Bulletin 52, pp. 75, 134.

⁶⁴ 15 U. S. C. A. 1, 2; 26 Stat. 209, 50 Stat. 593.

⁶⁵ *Board of Trade of Chicago v. U. S.*, 246 U. S. 231, 238.

⁶⁶ See *Apex Hosiery v. Leader*, 310 U. S. 469.

While the test has for many years depended upon the so-called "rule of reason"⁶⁷ it has recently been held that there can be no such thing as reasonable price fixing.⁶⁸ Thus it is important to ascertain whether the plan contemplates price fixing.

Again the answer is clearly in the negative. Under this plan each of the parties was to operate independently and in competition with everyone else (R. pp. 90, 91). The products of his labors were to be his own, and he could charge whatever the market would bring. He was not compelled to sell at any particular price or prices, or to share his proceeds with any of the other defendants, or anyone else. He had no obligation to purchase at any stated price, or otherwise, any products which might have a tendency to depress the market. In a word, he could charge whatever he thought the public would pay in a highly competitive market.

The Court below, of course, found no such forbidden practices inherent in the plan either in theory or practice. All the Court could say was, "It is safe to say that the members of the Guild instituted their anti-piracy campaign to protect their markets and price levels, as well as to improve business morals within the industry." (R. p. 180.) And it is noteworthy that even that statement was based upon testimony which was not a part of the record against petitioners (R. p. 181).⁶⁹ It is also worthy of note that the writer of a

⁶⁷ *Standard Oil v. U. S.*, 221 U. S. 1, 52.

⁶⁸ *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150.

⁶⁹ All the petitioners stipulated their facts and then rested (R. pp. 89-101). Certain original parties refused to stipulate and tried their case upon the sole theory that they were not members of the group. Federal Trade Commission certified the entire record and it was so printed. As these non-stipulating parties did not press an appeal, they were not before the Circuit Court and it was, therefore, pointed out to the Court in the briefs of both sides that testimony which concerned only such former parties was not a part of the record. For this reason this testimony is omitted in the record before this Court, by agreement with the Solicitor General.

critical study of the decision below preceded his quotation of the above with the following: "There was no real basis, it seems, for reading in hidden and subversive purposes as the Court did when it said: 'It is safe to say' (etc.)".⁷⁰

But even if the Court had been justified in departing from the record to speculate upon possible hidden motives of this sort, it would in no way change the situation.

This Court has held time and time again that the mere hope for fairer price levels through voluntary regulation does not render the regulation unlawful and this Court has likewise encouraged business men to "clean house" without recourse to the courts.

Thus, in *Sugar Institute v. U. S.*, 297 U. S. 553, 597-598, this Court recently reiterated the rule set forth by earlier cases⁷¹ as follows:

"Designed to frustrate unreasonable restraints, they" (anti-trust laws) "do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law. Nor does the fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, require that abuses should go uncorrected or that an effort to correct them should for that reason alone be stamped as an unreasonable restraint of trade."

and the rule was again restated in *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 215.

⁷⁰ XX Bost. Law Rev. 365; reprinted in N. Y. Law Journal May 4 and 6, 1940.

⁷¹ *Board of Trade of Chicago v. U. S.*, 246 U. S. 231, 238. *Appalachian Coals v. U. S.*, 288 U. S. 344, 373-374.

As a matter of fact, in *Appalachian Coals v. U. S.*, 288 U. S. 344, it would seem that the plan, whereby 70% of the coal producers of a certain important area of production agreed to sell only through a single selling agency in order to stamp out ruinous competition, the Court may have been presented with a borderline case. Nevertheless, the opinion by Mr. Chief Justice HUGHES was concurred in by all except one of the Associate Justices.

The facts now presented are even a far cry from the self imposed regulation by the Appalachian Coal group. There, the coal producers were concerned only with practices which, while perfectly moral and above-board, were ruinous of market conditions. The sale of the coal under these conditions in no way ruined the desirability of the product. Here, quite the opposite is true. The unethical practice of "design piracy" is not so much to be feared in the sense that it will cause the public to buy "A's" product rather than "B's". The trouble lies in the fact that the wholesale copying of the article in a particular market saps the inherent value out of the original, for it is fashion which we sell and not coal or hats. It may well be that it was for this reason that Worthy and Johnston & Fitch both found that protection had little or no effect on price.⁷²

One further case in this Court, of particular interest, is *Anderson v. U. S.*, 171 U. S. 604. There, the cattle traders of the Kansas City market formed an association to regulate the standards and practices of the business. The rules, however, forbade members to deal with non-members, but all who would abide by the rules were welcome to join. This Court held that such co-operative regulation of trade practices did not violate the Sherman Act.⁶⁴ As Mr. Justice

⁷² Worthy—N. R. A. Work Materials Div. (1936), Bulletin 53, p. 39, Appendix, p. 49. Johnston & Fitch, N. R. A. Work Materials Div. (1936), Bulletin 52, pp. 198-199.

BRANDEIS said in *Chicago Board of Trade v. U. S.*, 246 U. S. 231, 238:

“The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.”

and accordingly this Court has frequently upheld and encouraged regulatory measures.

Board of Trade of Chicago v. U. S., 246 U. S. 231, 238;

Cement Mfrs. Protective Assn. v. U. S., 268 U. S. 588;

Maple Flooring Assn. v. U. S., 268 U. S. 563;

Natl Assn. of Window Glass Mfrs. v. U. S., 263 U. S. 403.

The rule in New York with respect to the State anti-trust act⁷³ is not only in accord with the above cases, but the principles thereof have been applied to the Fashion Originator's Guild plan. *Wolfenstein v. Fashion Originator's Guild*, 244 App. Div. 656 (First Dept. 1935).

We close this discussion of price with the following thought: One cannot imagine any regulation of trade practices or stabilization of an industry that does not in some degree look to fairer price levels. Does this mean that businessmen may never co-operate to eliminate trade abuses, moral or immoral? The answer is clearly—no, as has been repeatedly held by this Court.

Nor is any other factor of illegal restraint present in this situation. There is no allocation of markets. Everyone, whether a member of the Guild or not, is perfectly free to sell his own goods in any market he desires. There is no

⁷³ Donnelly Act; N. Y. Gen'l. Bus. Law, Sect. 340. (Quoted in Index.)

restriction upon production of millinery. So far as the plan and its operation is concerned, there could be fifty or fifty million hats on the market at any time.

Finally, the plan shows no likelihood of resulting in deterioration of quality. In fact, quite the reverse may be expected.⁷⁴

The only question left for consideration is whether or not the plan is monopolistic in character. Once more, the answer is no.

There is no attempt to obtain the exclusive right or power to sell millinery in any market or part of a market. There is no attempt to concentrate the millinery industry or any part of it in the hands of a few. Everyone, whether a member of the Guild or not, may obtain the protection it affords (R. pp. 80, 93). Anyone who can design a hat may compete for the common prize; and they do compete vigorously (R. pp. 90-91).⁷⁵ All that the Guild asks is that they compete by their own skill and organization rather than by merely appropriating the skill and organization of others. Let the contest for the prize be one of skill and not of cheating.

This question was extremely well put in one of the law journal criticisms of the case below. In XX Boston Law Rev. 365, (reprinted N. Y. Law Journal May 6, 1940) the commentator had this to say:

"The court in *Millinery Creators' Guild v. Federal Trade Commission* (109 F. (2d) 175) proceeded on the theory that to prevent one from stealing a style or design amounted to the creating of a mo-

⁷⁴ See Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin No. 52, pp. 199-200, and Worthy, N. R. A. Work Materials Div. (1936) Bulletin No. 53. Appendix, pp. 39-53. Nystrom—Fashion Merchandising, p. 223.

⁷⁵ Worthy, N. R. A. Work Materials Div. (1936) Bulletin No. 53, p. IX.

monopoly in the originator. But is this so? A monopoly, it seems, embraces the idea of concentration of business in the hands of a few. This doesn't mean that the whole of a trade must be controlled, but it may refer also to domination of part of a trade. Could this be taken to include the situation where there are perhaps a thousand different designs of hats in the market at one time, where any individual may present his own design of the same fabric, made by the same machines, by no exclusive process? Can it be said that to grant the originator of one of these designs the exclusive use of it would be giving him any control over the market? Has he any semblance of domination over the millinery industry in respect to either price or production?"

It is now fair to ask whether, although the plan itself is free from the vice of monopoly, it is likewise free in practice.

While "the mere number and extent of production of those engaged in a co-operative endeavor to remedy the evils which may exist in an industry . . . should not be regarded as producing illegality"⁷⁶ it is interesting to note that petitioners produce only about 1% of the millinery of the United States.⁷⁷

The record shows no tendency to crowd anyone out of the industry. Our clients merely attempt to see to it that their own designs, and those of firms registering with them, be not filched and thereby ruined and that their competitors enjoy no unfair and unearned advantage.⁷⁸

⁷⁶ *Appalachian Coals, Inc. v. U. S.*, 288 U. S. 344, 376-377.

⁷⁷ See statistics cited in 49 Yale Law Journal 1290 wherein the decision below is criticized; see also Johnston & Fitch, N. R. A. Work Materials Div. (1936); Bulletin 52, p. 173.

⁷⁸ It is true that Milgrim Hats, after joining the Guild and thereby espousing its policies, refused to abide by the basic rules of the Guild concerning design piracy, and was expelled for that reason (R. p. 95). We submit that that is what a member of any club or association may expect if he wilfully violates the rules. As there is nothing to indicate that Milgrim was denied a fair hearing on the subject, we further submit that this is no evidence of monopoly.

Mr. Worthy's conclusions on the subject of monopoly as applied to this industry are very much to the point:

"It is highly unlikely that even the most effective control of piracy would lead to any monopolistic tendencies. Any form of monopoly is simply inconceivable in the millinery industry."⁷⁹

In closing we note that it does not appear that the Guild or any member has ever exceeded the authority of its charter by failing to grant a fair hearing to anyone accused of "design piracy" and the offer to adopt the methods of arbitration used by Fashion Originators' Guild (R. p. 38) shows practically no chance of such thing ever occurring. Should such event ever occur, the courts will have no trouble in finding a way to deal with such a violation of the spirit and content of the plan.

Conclusion.

It is respectfully submitted the Cease and Desist order of the Federal Trade Commission and the order of the Circuit Court of Appeals, Second Circuit, affirming the said order should be reversed.

Respectfully submitted,

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⁷⁹ Worthy—N. R. A. Work Materials Div. (1936), Bulletin 53, p. 38, Appendix, p. 48.

APPENDIX.

Being the portion of Worthy—N. R. A. Work
Materials Div. (1936) Bulletin 53, dealing
with Design Piracy (pp. 32-43).

A. STYLE PIRACY

1. *General Considerations.*

The most spectacular of the economic consequences of style is "style piracy". This term has been defined as a practice which "consists in the copying, without authorization from the creator or producer, of ornamental designs for industrial products created or introduced by others, and the selling in competition with such creator or producer, of products embodying the copied designs." (*)

(a) *Extent of Copying.*

Although the unauthorized copying of designs is at least as old as the industry itself, style piracy as a widespread practice, is of recent origin. It has shown a remarkable growth during the last six or seven years until from being, as it originally was, little more than a sporadic annoyance, it is now a thoroughly organized method of production and distribution. Lacking any effective check; legal or otherwise, piracy is today one of the dominant forces at work in the industry.

There are only a handful of houses which make any great effort to create new and original designs; all other members of the industry depend almost entirely on these houses for their styles. Styles which are apparently successful are quickly copied, reduced in price and quality, and put out in such numbers as frequently even to destroy the

(*) A. C. Johnston, N. R. A. Trade Practice Studies Section, Style Piracy Study.

markets for which they are intended. It is a common thing for an individual style to run swiftly through the industry's entire price range by means of a series of rapid and unauthorized reproductions. This cheapening process is achieved by lowering the standards of material and workmanship, as well as by the economies of large scale production and the absence of designing costs.

(b) *Methods of the Copyist.*

The copyist is an ingenious person. His methods are many—some of them crude, some frankly dishonest, others clever to a degree. The most common of all methods is simply the purchase in the retail market of the models to be copied. A distributor frequently brings to a manufacturer samples purchased from an originating house for reproduction at lower prices. Resident buyers and the buying syndicates in particular have been charged with frequent indulgence in this practice. (*)

Fashion exhibits and style shows provide excellent opportunities for the copyist. Their activities in this field finally became so flagrant that rules prohibiting actual sketching became necessary. Such prohibitions, however, have done little to stop pirating, because an expert copyist can memorize the details of a design and reproduce it at his leisure. The window displays of retail shops are also an important source of the copyist's styles for the season.

Free lance designers, whose services are often utilized by several establishments concurrently, have sometimes disclosed to one firm designs prepared by them for another. Copyists have been known to bribe designers and other employees of fashion originating houses, so that in spite of all precautions the pirate is sometimes able to exhibit copies

(*) See Seligman, E. R. A., Op. Cit.

at reduced prices simultaneously with the appearance of the original model. By bringing pressure to bear on manufacturers of hat blocks, manufacturers are sometimes able to secure copies of blocks produced for others and to turn out a hat identical with that of the originator.

(c) *The Question of Control.*

Whenever a designer conceives of a new way to work an old idea, the question of ownership is immediately raised. One group holds that the originator is entitled to a monopoly on his creation; the other contends that all designs, no matter by whom or when created, are public property and that no individual is entitled to exclusive right thereof.

The millinery industry is sharply divided over this question. Holders of the first view are for the most part the "high style" houses who each season go to considerable effort and expense to develop original designs. Adherents of the second view are for the most part the rank and file of the industry who depend almost entirely on the creative work of others. Each group has a vital economic stake in the question of control. Under present arrangements, the originator, at best, is deprived of the full benefit of his creation; at worst, he finds his capital so far depleted as to be able no longer to continue in business. For their own protection, therefore, the originating houses have attempted during the last few years to develop means for curbing the activities of the pirate. In these attempts they have, naturally enough, been vigorously opposed by the rank and file of the industry, who sincerely believe that only through unrestricted copying can they meet competition. Of all the internal conflicts to which the millinery industry is subject, none is so deep-seated or so bitter as that raging about the question of controlling style piracy.

2. *The Case for Control.*

(a) *Ethical Aspects.*

Proponents of plans for design protection make out a very good case for themselves on ethical grounds. The laws of this country are such, they point out, that if a man steals a hat he has committed a crime, whereas if he copies the style of that hat in its most minute detail he is entirely within the law—this notwithstanding that the value of the hat lies not nearly so much in its physical substance as in the intangible elements of its style.

“The present lack of a design registration law and the fact that copying is still considered a lawful activity by the courts amount to a right to despoil the business of others. It is entirely illogical that this condition be allowed to continue.” (*)

(b) *Style Origination and Demand.*

All parties agree that the industry is peculiarly dependent upon a multiplicity of styles. A small fraction of the millinery now manufactured would suffice the needs of American women if all they looked for in their hats were a useful head-covering. Notwithstanding this general agreement, however, both originators and copyists claim credit for this essential multiplicity.

In order to have an industry at all, say the originators, there must be style creation, and that creation, to be maintained, must be protected. What the patent laws are to the inventor and the copyright laws to the author, the proper type of design protection would be to the creative designer. The United States is far behind other countries in the field of industrial art, and this backwardness is believed by many

(*) Nystrom, Paul H., *Fashion Merchandising*, p. 243.

to be due to the dominance of the copyist and the inability to secure to the creator the fruits of his labors. If styles were protected in this country—the argument proceeds—the designer would have a much more powerful incentive to produce original models, and demand would be considerably increased by enhanced consumer interest.

As matters stand now, however, the originators are rapidly losing ground because of the unequal odds of the competitive struggle. The creators of millinery styles labor under enough inevitable handicaps at best. Leadership in fashion may be purchased only at a very high cost. It involves the expense of experimental work, for every style introduced is of necessity an experiment in consumer demand. A high proportion of such experiments cannot help but turn out badly. Expensive designing staffs must be maintained and constant touch must be kept with European centers. The economies of mass production are impossible and manufacturing costs must be spread over the relatively small number of hats produced in styles found successful. When the disadvantages of style piracy are superimposed upon these inherent conditions, it is small wonder that the creating houses are being driven from the industry. Ultimately, the argument concludes, unrestricted copying will lead not only to the destruction of the originator but to the defeat of the copyist himself through the failure of the industry to provide that excellence of design demanded even in the lowest-priced merchandise.

(c) Effect of Piracy on Distribution.

According to the proponents of design protection, the prevalence of style piracy is largely responsible for the excessive rate of merchandise obsolescence and consequently for much of the depressed state of the millinery market. The more rapidly merchandise becomes out-moded the more

difficult the adjustment of production to distribution and consumption. Millinery values are largely dependent upon day-to-day changes in style. If the number is out of date, the seller, whether manufacturer or retailer, is fortunate if he is able to dispose of it at any price.

The retailer suffers with the manufacturer in this respect. As a matter of fact, style piracy is at the root of much of the returned goods evil, as well as the cancellation of orders evil, which beset this industry. Piracy has played a far more serious part in business failures than has been acknowledged. The yearly loss to the industry, in the form of obsolescent stocks, returned merchandise, and canceled orders must run into the millions of dollars. It is a loss which affects the copyist no less than the originator. It is a loss the industry can but ill afford.

(d) *The Consumer Interest.*

According to the proponents of control, the curtailment of piracy would benefit the consumer in several ways. First, the average woman makes an investment not only in material and workmanship, but, what is more important to her, in style. At least 70% of the value of any piece of outer wearing apparel consists of this intangible in a woman's mind. (*). To purchase an item in millinery, therefore, which she believes to be an individual acquisition, and later to find it copied in inferior workmanship and material and in endless duplication, destroys the greater part of the satisfaction which she has looked to secure.

In the second place, excessive copying makes it necessary for the consumer to pay higher prices than would otherwise be the case. If piracy were controlled the orig-

(*) M. D. C. Crawford, Consumers' Advisor, Millinery Code Hearings August 1 and 2, 1933; undated memorandum addressed to Deputy Administrator Earl Dean Howard, Central Records Section.

inator would be able to produce more of the hats he designs. He would purchase his materials in greater volume and consequently at a saving; his factory organization would be more stable and less time would be lost in shifting from the production of one style to another; the output of his employees would be increased by limiting their work to a smaller number of styles. All these economies would make possible lower prices to the consumer.

In the third place, excessive copying reduces the quality of material and workmanship going into the industry's product. The trends of competition are toward the poorest and cheapest that may be produced rather than to the best that will be accepted.

3. *The Case Against Control.*

(a) *Effect of Copying on Demand.* Agreeing with the proponents of control that the industry depends for its volume on a multiplicity of styles, the copyists claim for themselves the credit for that multiplicity. The rapid obsolescence of styles which is one of the consequences of piracy, they point out, increases the necessity for the constant creation of new styles. The freedom to imitate designs, moreover, has enabled manufacturers of low-priced merchandise to make available to the great mass of consumers the latest and cleverest style innovations at prices within reach of the most modest purse.

Design protection would also, it is held, decrease the demand for higher-priced millinery. The desire of women of better financial means for exclusiveness in their millinery causes them to buy a large number of hats each season. The speed with which imitations are made and the great numbers in which they are sold quickly deprive the new hat of its individuality and thus furnish the makers of more expensive

headwear not only a stimulus to constant creation but also a market for their newly designed merchandise.

(b) *The Consumer Interest.* The copyists maintain that it has been primarily through their efforts that stylish millinery has been made accessible to the average consumer. A curtailment of their activities would create a condition out of line with our ideas of democracy. Visitors to this country are constantly amazed at the ability of the average American woman to dress in the height of fashion. European countries, having design protection, make this impossible. It is possible only where copying is easily and quickly done. A tendency toward social stratification with considerable consumer resentment would be the inevitable result of any attempt to abolish piracy.

(c) *The Administrative Problem.* The copyists maintain that the administrative difficulties confronting any conceivable program of control are insuperable. There is, first and foremost, the problem of defining in general terms what constitutes piracy and determining in specific instances whether a given hat is a copy. There are few designs which are in a strict sense original. The vast majority are simply variations on old themes.

Keeping in mind that the industry is one in which styles change with great rapidity, what recourse would a manufacturer have from an adverse decision of an administrative body? By the time the controversy could be settled, the style would be worthless. In view of this rapidity of style change, furthermore, would it be possible to set up an agency capable of handling the multitude of styles produced during the few short busy weeks of the year? It is also reasonable to suppose that manufacturers would file not only a vast number of different designs but also a multiplicity of variations on each such design, both to protect themselves

and, possibly, to preempt the field on those particular types. The result would be a tendency to monopoly as well as the imposition of an impossible burden on the facilities of the registration bureau. No system could possibly work which did not render immediate service. Forty-eight hours would have to be the absolute maximum time for filing, and even this period is a long time to ask a manufacturer to hold off production in the height of the season. The work of the agency would expand and contract with seasonal activity. It would have to be so organized as to handle literally thousands of registrations during a few weeks of the year and to remain comparatively idle during the slow months.

Finally, by what means would such an agency enforce its decisions? In the last resort, it must fall back on the courts. In an industry where styles are changing so rapidly, any such means of enforcement cannot be effective. Long before the matter could be scheduled for hearing, the style would be worthless.

4. *Critical Evaluation.*

The most interesting feature of this debate on control is the claim of both factions for the credit of maintaining demand for the industry's product. These conflicting claims are not incompatible, however. Both the originator and the copyist contribute to the diversity of styles. There are two distinct types of diversification involved. Originators are largely responsible for the diversification of styles offered in the market at any given *instant* of time; copyists are largely responsible for the multiplicity of styles offered during the course of any given *period* of time. The copyist, in other words, is responsible for the rapid *succession* of styles, the creator for the *number* of styles which constitute these successive "waves".

The distinction is important, and may be the key to an intelligent decision between the contentions put forward by each faction. Notwithstanding the lack of sufficient information on which to determine conclusively which type of diversification leads to increased consumption, a tentative conclusion may be broached. On the face of it, the copyist seems to have the better of the argument, because it is his activity which brings about the rapid obsolescence of style and consequently the necessity on the part of the consumer for more frequent purchases in order to keep pace with rapidly changing fashions. It is obvious, however, that this type of diversification is purchased at too high a cost. It is also probable that the diversification contributed by creators would provide sufficient consumer demand without exacting such tremendous tolls in the form of obsolescent merchandise. Piracy contributes substantially to the high degree of instability which besets the industry. It might very well be that it could afford some diminution in the rate of style turnover in exchange for more stable conditions. From the point of view of the consumer, the type of diversification contributed by the copyist is definitely undesirable. Style changes at best impose a considerable social cost and an artificially rapid rate of turnover can only be viewed as an unnecessary waste.

It is highly unlikely that even the most effective control of piracy would lead to any monopolistic tendencies. Any form of monopoly is simply inconceivable in the millinery industry. A prohibition of copying would probably increase the manufacturer's capital requirements and thereby prove a hardship to the "bankruptcy fringe," as well as render entrance into the industry more difficult. Both of these results, however, would tend to increase the stability of the industry.

Nor is it likely that the abolition of piracy would result in prohibitive price increases. In the first place, the cost of installing designing departments would not be excessive. The industry during the past few years has made wage increases many times greater than could possibly be involved in employing additional designers. Such increases have been made without any substantial rise in prices. The larger volume of business done by the popular-priced houses would make it possible to spread the added cost over a wide area. The addition to unit costs would be relatively inconsequential and the consumer would suffer little if any advance in prices. Finally, competition would not be impaired and would operate effectively to check any undesirable price increase.

Any program of control would present considerable difficulties of administration. Piracy has, however, been controlled in the millinery industry in other countries and in other industries in this country. Notwithstanding the obvious inadequacies of these plans so far as a complete elimination of piracy is concerned, they have certainly checked the practice. Evidently, no undesirable results have accrued from these curbs; on the contrary, the industries have apparently profited thereby. (*) In any event, the controls have demonstrated themselves not impossible of administration.

Granting the desirability of control and conceding its success in other lines, the conclusion still does not necessarily follow that controls in the millinery industry are practicable at the present time. For instance, there are

(*) See Nystrom, Paul H.; *Fashion Merchandising, and Economics of Fashion*. See also *Transcript of Hearing, Dress Manufacturing Industry*, November 15, 1934, testimony of Miss Louise L. Blunt, Director, The Industrial Design Registration Bureau, Inc. (Silk Industry), and Professor Royal Bailey Farnum, Chairman, Design Registration Bureau for Medium and Low Price Jewelry.

certain fundamental differences between the problems of the silk and millinery industries. In the first place, the elements of design are much simpler in the case of fabrics than in the case of millinery. Moreover, designs in fabrics are two-dimensional and in millinery three-dimensional. Consequently, the problem of classification is infinitely less difficult, as is the problem of determining whether a given design is an original or copy. Furthermore, the number of styles brought out in the millinery industry in any one season far exceeds the number brought out in a comparable period in the silk industry. The problems of administration, therefore, would be multiplied many fold in the millinery industry.

It is significant also that the silk industry is able to avail itself of the cooperation of converters and printers. Unless a design had been approved by the Registration Bureau, it cannot be processed. Without this extremely effective cooperation of the converters and printers it is at least doubtful that the plan could have been successful. The millinery industry, unfortunately, has no similar group whose cooperation could insure the success of a program of control.

Most important of all, the silk industry went through an extended educational process before any actual steps toward control were undertaken. The question began to be actively discussed in 1916, but it was not until twelve years later that the Bureau of Registration was organized. During this period the matter had been debated on all sides and by 1928 all factions were ready for fairly stringent regulation. Without this process of education, the work of the Bureau would certainly have been infinitely more difficult. It might even have proved impossible.

The millinery industry has not had anything like the education on the subject that the silk industry had. It certainly behooves the advocates of control to look to this angle

of the matter, for it is probable that the only permanent and effective means of dealing with the problem is by a long range program of education for producers, distributors, and consumers.

5. *Efforts to Control.*

(a) *Through Existing Law.* One of the most persistently reiterated arguments of those who oppose the various types of piracy control which are put forward from time to time, is that existing laws afford ample protection to the originator where such protection is warranted. On examination, however, existing law, both common and statutory, (*) reveal themselves completely inadequate.

The common-law applies only in such instances in which fraud, conspiracy, or larceny may be proved with respect to the methods employed in copying, and as copying may be so readily done by methods entirely within the law, the common law of unfair trade is of no assistance. The trade mark laws afford no protection to the style creator, for the trade mark as such is of little value and the thing copied is the style itself. The copyright laws have been held by the Courts to be inapplicable to designs used in commercial and industrial production. The patent laws afford protection only to things new and useful, and millinery designs have little to do with utility in the ordinary sense of the word. Finally, the design patent laws, under which one might naturally expect some sort of protection, are rendered largely inadequate because of narrow interpretations of the concept of originality, delays incident to the functioning of administrative machinery, and prohibitive costs of registration. The conclusion must be drawn that existing laws fall

(*) This discussion is based upon the cited works of Paul H. Nystrom and upon the Style Piracy Study of A. C. Johnson, Trade Practice Studies Section, N. R. A.

far short of affording adequate protection. Fashion creators have therefore turned to agitation along other lines.

(b) *The Millinery Quality Guild.* Private efforts of the millinery industry to control design piracy have been largely patterned on the Fashion Originators Guild organized in the dress industry in 1931. The Millinery Quality Guild, organized in 1934, operates through agreements with retailers in much the same manner as the Fashion Originator's Guild. These agreements bind the retailer not to purchase from any manufacturer any hat known to be a copy of a style created by a member of the Guild. The retailer also binds himself to stipulate in his dealings with manufacturers that any hat found to be a copy after purchase and delivery is subject to return. There were fourteen members of the Guild as of October 29, 1935. (*) The prices of merchandise manufactured by these members range from \$4.50 to \$12.50 per hat. The Guild's agreement has been signed by 1700 of the best retail outlets in the country. (**)

As to the success of the Guild, Mr. N. J. Garfunkel, its President, has this to say:

"The degree of success has been limited, but most encouraging for the reason that we have been able, not only to maintain the principles for which this organization was created, but it has been a great stimulate and guide for the manufacturers of lower grade goods, to maintain a degree of ethics".

Fortune Magazine, reviewing the activities of the Millinery Quality Guild and of the Uptown Creators Guild (a

(*) Information contained herein with reference to the Guild, unless otherwise specified, is based upon a letter dated October 29, 1935, from Mr. N. J. Garfunkel, President of the Guild.

(**) "\$200,000,000 Worth of Hats," *Fortune Magazine*, January 1935.

group within the Quality Guild) draws the following conclusions:

"The system has had some effect, but the members of the M. Q. G. (Millinery Quality Guild) and the U. C. G. (Uptown Creators Guild) represent only a minute fraction of the millinery business, and it is useless to expect the cheapest hat makers and the big, cheap retail outlets to sign any such agreement. They have everything to gain by copying . . . and they have nothing to lose but the goodwill of the highclass designers and retailers, for which practically enough, they don't give a damn.'" (***)

This rather terse conclusion is substantially accurate. It is highly unlikely that any voluntary efforts to control copying can achieve any substantial success, and the prospects of compulsory regulation, by federal statute or otherwise, are equally discouraging. For better or worse, it would appear that style piracy is here to stay and that the creative milliner must perforce adapt himself as best he may to a permanent. (*)

(***) Ibid.

(*) Efforts to control piracy through the Millinery Code will be discussed subsequently.

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IN THE

Supreme Court of the United States

October Term, 1940

No. 251

MILLINERY CREATOR'S GUILD INC. (formerly
MILLINERY QUALITY GUILD, INC.), DAVE
HERSTEIN COMPANY, G. HOWARD HODGE,
EDGAR J. LORIE, INC., L. G. MEYERSON,
INC., VOGUE HAT CO., HARRY SOLOMONS
and MAY F. SOLOMONS, co-partners trad-
ing as "HARRY SOLOMONS AND SONS",

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS.

LOWELL M. BIRRELL,
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27 Cedar Street,
New York, N. Y.

Of Counsel:

CHARLES A. VAN DATTEN.

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Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS.

POINT I.

**Respondent has agreed that no price fixing or
manipulation is involved.**

The findings of the Federal Trade Commission regarding effects on price (R. p. 15) are not only unfounded but violate its agreement with counsel.

To save the time and expense to both sides of amassing thousands of pages of testimony (R. p. 46) the facts have been stipulated (R. pp. 89-96). As a part of this agreement with respondent it was understood that it was not claimed that petitioners had done anything other than enforce their

campaign against style piracy. This is shown at page 97 of the record where the Examiner made the following statement to counsel for Federal Trade Commission:

"As I understand that," (the stipulation) "just from the one reading, you are agreeing that these Respondents have done nothing in the way of trade restraint except strictly to enforce respect for the styles which they have actually originated."

The answer of counsel for the Commission was:

"That is right."

The findings of the Commission (R. p. 15), and the speculations of the Circuit Court of Appeals (R. pp. 180-181)¹ were thus wholly improper.

The Respondent's present position is not only improper as a violation of its agreement but is unfounded. It is based upon statements made to retailers in an effort to sell them the plan. The sales argument was to the effect that the retailer (not petitioners) could look to protection of his competitive position through elimination of inventory mark-downs caused by the destructive effects of design piracy (R. pp. 115, 117, 163).

Thus both by agreement of counsel and on the facts there is no element of price regulation in this case.

POINT II.

Respondent incorrectly assumes that there is a finite number of designs.

Respondent is incorrect in its assumption that there is a finite number of designs. The number variations upon

¹ As we have shown, such speculations were based on testimony which was not a part of the record against the petitioners. (Petitioners' Brief, p. 32.)

the theme is infinite just as are the patterns formed in a kaleidoscope or in a crystalline structure of a snow flake.

It is upon this false premise that Respondent bases its monopoly argument. The argument falls with the premise. There is no attempt to monopolize any part of the millinery trade.

There is no pooling of designs or other objectionable practice. Purely and simply the situation is that a number of creators of designs who are in active competition (R. pp. 90, 91) are seeking to protect themselves against the appropriation and destruction of the benefits of their skill and investment.

POINT III.

Respondent's analysis of petitioners' position regarding *Cheney Bros. v. Doris Silk Corp.*, 35 Fed. (2nd) 279 is incorrect.

Respondent is incorrect in stating that we do not contest the correctness of *Cheney Bros. v. Doris Silk Corp.*, 35 Fed. (2nd) 279.

As pointed out on page 30 of Petitioners' Brief it is our contention that that case is out of line with the decision of this Court in *International News Service v. Associated Press*, 248 U. S. 215, as well as a number of other cases.

With respect to the *Cheney* case (*supra*) it should be noted, however, that there the Court was asked to intervene on plaintiff's behalf and decided a question of artistic design. The Court recognizing that it was a "lame answer" merely declined to intervene in a field which it felt was not qualified to act. (See also the concluding paragraph of Mr. Justice BRANDEIS' dissent in *International News Service v. Associated Press*, 248 U. S. 215.)

As we have pointed out, whether these subtle questions of artistic designs come to the courts through unfair com-

petition or through infringement suits under appropriate legislation the problem is the same. The delays, expense and problem of finding the pirate make either solution impractical and in either event a serious burden would be placed upon the courts.

Thus a most intensive and comprehensive study of this problem has led to the following conclusion:

"The *sine qua non* of a successful plan based upon 'trade novelty' is the existence of a tribunal having thorough knowledge of the products of the trade and the power to make decisions acceptable by the parties concerned or capable of backing by legal sanction. In general, such a plan is adaptable only to voluntary efforts toward design control. It is wholly unadaptable to a permanent legal control."²

Conclusion.

It is respectfully submitted the Cease and Desist order of the Federal Trade Commission and the order of the Circuit Court of Appeals, Second Circuit, affirming the said order should be reversed.

Respectfully submitted,

LOWELL M. BIRRELL,
Attorney for Petitioners.

Of Counsel:

CHARLES A. VAN PATTEN.

² Johnston & Fitch N. R. A. Work Materials Div. (1936) Bulletin 52, p. 208.

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No. 251

In the Supreme Court of the United States

OCTOBER TERM, 1940

WILLIAM C. STANTON, JR., and
MILBURN QUARRY CO., INC., et al.,
PETITIONERS

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 251

MILLINERY CREATORS' GUILD, INC. (FORMERLY MIL-
LINERY QUALITY GUILD, INC.), ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We believe the decision below to be correct and we will so urge on the merits if the petition for a writ of certiorari should be granted. However, it is in substantial conflict with *Wm. Filene's Sons Co. v. Fashion Originators' Guild*, 90 F. (2d) 556 (C. C. A. 1st). The conflict in reasoning between the circuits is made still plainer by the decision of the Circuit Court of Appeals for the Second Circuit in *Fashion Originators Guild of America, Inc. v. Federal Trade Commission*, not yet reported, decided July 22, 1940. In that case the court said, of the *Filene's Sons* decision:

We cannot find any distinction between the facts as there found and those which we feel

bound here to take as though proved; and it follows from what we have already said that we are unwillingly forced to a different conclusion. That difference lies in the fact that, as we have said, we do not understand that a court will inquire into whether a combination benefits an industry when the means used are themselves unlawful; and that to try altogether to exclude others from manufacturing what they are free to make, is an unlawful means. If on the other hand the First Circuit believed that the "originator" of a design has an interest to protect greater than one who has merely appropriated an existing design at his own labor and expense, we cannot agree as to that either.

We therefore do not feel justified in opposing this petition for a writ of certiorari.

Respectfully submitted,

NEWMAN A. TOWNSEND,
Acting Solicitor General.

✓ RICHARD P. WHITELEY,
Acting Chief Counsel,
Federal Trade Commission.

AUGUST 1940.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 251

MILLINERY CREATOR'S GUILD, INC. (FORMERLY
MILLINERY QUALITY GUILD, INC.), ET AL., PETI-
TIONERS

v.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 177) is reported in 109 F. (2d) 175.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on February 19, 1940 (R. 187). The time for filing petition for certiorari was duly extended by an order of one of the Justices of this Court to July 18, 1940 (R. 188). Petition for certiorari was filed July 18, 1940, and was granted October 14, 1940.

The jurisdiction of this Court rests upon Section 5 of the Federal Trade Commission Act (15 U. S. C., sec. 45) and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

(1) Whether petitioners' combination to restrain interstate commerce by a boycott can be justified under the Sherman Act by showing that its purpose was to eliminate a trade abuse.

(2) Whether petitioners' combination can be justified on the ground that copying designs created by a competitor is unfair competition or "equitable tort."

(3) Whether petitioners have affirmatively established that the so-called style piracy against which their combination was directed is a trade abuse.

(4) Whether petitioners' combination was in purpose and effect one for price maintenance and therefore *per se* illegal under the Sherman Act.

(5) Whether, if the reasonableness of the restraints imposed is open for consideration, they were unreasonable and illegal because of the arbitrary and inequitable manner in which petitioners enforced their boycott.

STATUTE INVOLVED

The statute involved is the Act of September 26, 1914, c. 311, 38 Stat. 717 (15 U. S. C., Secs. 41 *et seq.*), known as the Federal Trade Commission Act. The pertinent provisions of this Act at the time the Commission issued its order are:

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations; or in any Territory of the United States or in the District of Columbia, or between any such

Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

* * * * *

SEC. 5.¹ That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce.

Section 5 further authorizes any party against whom the Commission has entered a cease and desist order to obtain a review thereof in an appropriate circuit court of appeals; gives such court jurisdiction to affirm, set aside, or modify the order; and provides that the Commission's findings as to the facts, if supported by testimony, shall be "conclusive."

STATEMENT

This case involves the validity of an order of the Federal Trade Commission, issued under Section 5 of the Federal Trade Commission Act, directing the Millinery Creator's Guild, Inc. (formerly Millinery Quality Guild, Inc.) and various manufacturers of women's hats, to cease carrying out a plan to prevent so-called "style piracy" in designs for women's hats. The Millinery Creator's Guild, Inc. will be referred to herein as the Guild and the manufacturers named

¹ The Act of March 21, 1938, c. 49, 52 Stat. 111 (15 U. S. C., Supp. V, Sec. 45), amended each of the first two paragraphs of Section 5 by adding after the word "commerce" the words "and unfair or deceptive acts or practices in commerce."

as respondents in the Commission's complaint will be referred to as petitioners.² Of the 23 manufacturers against whom the Commission issued its order (R. 17), only six are now seeking reversal of the order.³

The Guild is a stock corporation dominated and controlled by petitioners (R. 8). Since July 1934 it has held itself out to the public as a membership corporation with a membership composed of petitioners (R. 8-9).

The case was heard on stipulated facts and the evidence introduced prior to the stipulation, together with the Commission's inferences from such stipulated facts and evidence (R. 89).⁴ The facts found by the Commission may be summarized as follows:

² The Commission's findings referred to certain manufacturers as "member" respondents and others as "affiliate" respondents (R. 8-10). The grounds for this distinction were not material to the Commission's decision nor are they material to the present issue. Those named as "member" respondents originally sponsored the plan to eliminate "style piracy," controlled the Guild, and, after launching the plan, sought and secured participation therein by those named as "affiliate" respondents (R. 8-12). All of the manufacturers now contesting the validity of the Commission's order were named as "member" respondents.

³ The 17 not now contesting the Commission's order are accounted for in the petition for writ of certiorari (p. 2) as follows: One did not "appeal" to the Circuit Court of Appeals, five are "no longer in business," and 11 are "no longer associated with" the Guild.

⁴ Four of the manufacturers whom the Commission named as respondents did not join in the stipulation and additional evidence was introduced against them (R. 99). The Commission dismissed the complaint as to three of the four, finding that the evidence did not implicate these three (R. 15, 18).

The element of style is one of the most important factors in the sale of women's hats (R. 11). Certain manufacturers create their own designs for the hats which they make. Their designers, after observing prevailing style trends and fashions, particularly in Paris, devise adaptations, and these adaptations are considered in the industry to be original creations (*ib.*). Petitioners are all original creators in this sense and they constitute a substantial majority of the leading style originators in the industry (*ib.*). In general, they sell their hats at wholesale for about \$8 a hat,⁵ but some of them make hats to sell at a lower wholesale price (*ib.*). High-grade retailers of women's millinery, in order to offer a full line, are normally "required" to procure at least some of their models from petitioners (*ib.*).

Manufacturers who do not originate their own designs copy those of other manufacturers (R. 11). To prevent such copying, which is commonly known in the industry as "style piracy," petitioners in 1934 adopted the plan which the Commission found to be illegal.

Petitioners agreed with one another that after July 16, 1934, they would not sell or show any merchandise to any retail store unless it had signed an agreement entitled a "Declaration of Cooperation"

⁵ While the findings and stipulation do not expressly so state, the \$8 wholesale price mentioned therein undoubtedly refers to petitioners' customary minimum price. See R. 80. This was the interpretation placed upon the finding by the court below (R. 177).

promulgated by the Guild (R. 12).⁶ By this agreement the retailer obligated itself not to buy "any copies of pirated styles created by members" of the Guild (R. 13). It also agreed (*ib.*) to stamp the following clause upon all its millinery orders:

This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of The Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.

The required Declaration concludes with an expression of appreciation for the "opportunity" afforded the retailer to lend its cooperation in a matter which "will lessen the confusion in our business and add to the profits" (R. 13).

The Guild employed a regular series of circular letters and follow-up literature designed to induce or coerce acceptance of the agreement (R. 13). These letters stated that the Guild membership comprised "practically every important creative firm in the millinery industry" and that only subscribing stores would be permitted to inspect or purchase petitioners' women's hats (R. 13-14). As a result of this campaign, about 1600 "high grade" retail dealers in women's hats located throughout the United States signed the Declaration of Cooperation (R. 12).

Petitioners publicly announced to the trade that they would not sell to retailers who had not signed the required Declaration (R. 14). They refused in

⁶ The Declaration is set forth in full in the findings (R. 13).

some cases to sell to nonsignatories (*ib.*). In certain cases they were instrumental in getting retail stores to return purchased merchandise which the Guild had declared to be copies of hats originated by petitioners (*ib.*). Petitioners likewise agreed to expel from their "membership" any one of their number who failed to adhere to the terms of their plan and agreement (*ib.*). They expelled one manufacturer for this reason and notified the retail trade and the public generally of this expulsion (R. 15).

To facilitate operation of the plan, the Guild established a Registration Bureau with which any creator of an "original" design or style might register his model (R. 12).⁷ Petitioners' usual practice was to regard any model which had been registered with the Bureau as an original design or style and they treated any imitation or copying thereof as design piracy (*ib.*). However, in the case of any alleged design piracy, filing and registration were not deemed conclusive but the matter was determined either by a committee of the petitioners or by the officers and employees of the Guild (*ib.*).

Petitioners, "except as to the understandings and agreements" previously set forth; "are engaged in substantial competition with each other" and with others carrying on a like business in the sale of women's hats in interstate commerce (R. 10-11).

The Commission found (R. 15) that the tendency and effect of petitioners' combination and of their

⁷The form for registration was very simple (Ex. 25-A and 25-B, R. 166B-166D). See also R. 72-73.

practices thereunder were unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce by, *inter alia*:

(a) Limiting manufacturers as to their retail outlets and retailers as to their sources of supply;

(b) Depriving the public of the benefits of "normal price competition" among retailers;

(c) Preventing retailers from purchasing their requirements "except subject to the limitation and restriction" of petitioners' combination;

(d) Increasing the price of stylish women's hats to retailers and consumers "through the protection of profits" resulting from petitioners' "activities to eliminate from the trade alleged copies of styles which they claim * * * to have originated";

(e) Enabling petitioners to control the business of hat manufacturers "to the extent of limiting and as far as possible, eliminating the retail outlet" for hats copied from styles "originated" by petitioners.

On the basis of these findings, the Commission concluded that petitioners' practices constituted unfair methods of competition (R. 16) and an order was entered directing petitioners and the Guild to cease and desist therefrom (R. 16-18).

The court below unanimously held that petitioners and the Guild were engaged in a boycott which is unlawful under the Sherman Act and that the Commission was therefore justified in concluding that their method of restraining competition was unfair (R. 178). The Commission's order was

found to be appropriate to prohibition of this illegal boycott (R. 182) and was affirmed (R. 185-187).

SUMMARY OF ARGUMENT

I

Acts and practices which are unlawful under the Sherman Act constitute "unfair" methods of competition within the meaning of the Federal Trade Commission-Act. Since petitioners substantially restrained interstate trade and competition by means of a boycott, their combination falls within the numerous decisions holding that such a restraint is prohibited by the Sherman Act.

II

Combinations to refuse to deal with others unless they accept the restrictions upon their trade which the boycotting group demands have been consistently held to be illegal under the Sherman Act. A restraint of this nature has been viewed as prohibited by the statute, so as to preclude defense thereof upon the ground that the restraint is reasonable.

Consideration of the reasons given for holding that price-fixing combinations are *per se* illegal under the Sherman Act supports the conclusion reached in the boycotting cases. Price fixing is held to be outlawed by the Act because of its necessarily destructive effect upon competition and a free market, which the Sherman Act was designed to maintain. A combination whereby, through a boycott, control is exercised over the entry into the market of competitors or a

competitive product is more destructive of freedom of trade than price fixing since the latter merely aims at eliminating one form of competition, price competition, whereas the former suppresses *all* competition (within the limits set by the boycotters) as to the persons or products subjected to the boycott.

III

There is no basis for justifying petitioner's combination as one confined to the prevention of unfair competition. It is settled that copying an "original" design is not unfair competition once products embodying the design have been offered for sale to the general public. Petitioner's failure to question the soundness of the decisions so holding is inconsistent with their reliance upon *International News Service v. Associated Press*, 248 U. S. 215. The leading decision denying design protection held that the *International News* case did not apply in this field, where determination of the scope and limitations of such protection would present almost insoluble legal and practical problems. In any event, the reliance upon unfair competition is merely a variant of the rejected contention that the purpose to prevent a trade abuse could justify such a combination.

IV

Restraint of trade by boycott, in any event, is at least *prima facie* illegal and requires justification. Petitioners; therefore, must affirmatively establish the justification upon which they rely, namely, that

copying of original designs is "unfair" and disastrous to the industry. The evidence not only does not establish their claim but such inferences as it warrants are adverse to petitioners. This Court will not piece out the details of a particular practice in an industry through the use of judicial notice; petitioners cannot convict the commission of error on the basis of additional facts presented by way of judicial notice to the reviewing courts. Furthermore, the cited publications do not support petitioners' claim.

V

The Commission found that petitioners' combination had the purpose and effect of depriving the public of the benefits of "normal price competition" and of enhancing prices to retailers and consumers. The evidence, together with the inferences which the Commission might legitimately draw therefrom, support this finding. Petitioners were therefore parties to a price-fixing combination illegal *per se* under the Sherman Act. A combination to maintain and stabilize prices, by eliminating from the market the product chiefly instrumental in rendering prices truly competitive, is *per se* illegal under the Sherman Act. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150.

VI

Irrespective of all other considerations, the restraints imposed by petitioners' combinations were unreasonable because the method used for enforcing the boycott was inherently arbitrary. The members of the boycotting group reserved to themselves the

sole voice in deciding whether petitioners' designs were "original" and whether they had been "copied."

ARGUMENT

I

THE COMMISSION'S ORDER IS VALID IF THE BOYCOTTING COMBINATION AGAINST WHICH IT IS DIRECTED IS ILLEGAL UNDER THE SHERMAN ACT

It is settled that all acts and practices which are unlawful under the Sherman Act constitute "unfair" methods of competition within the meaning of the Federal Trade Commission Act. "The Act undoubtedly was aimed at all the familiar methods of law violation which prosecutions under the Sherman Act had disclosed. * * * But as this Court has pointed out it also had a broader purpose * * *"
Federal Trade Commission v. Keppel & Bro., 291 U. S. 304, 310. The Trade Commission Act is not confined in its operation to "methods of competition in interstate commerce which are forbidden at common law or which are likely to grow into violations of the Sherman Act." But the Sherman Act "shows a declaration of public policy to be considered in determining what are unfair methods of competition, which the Federal Trade Commission is empowered to condemn and suppress." *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453. See also *Butterick Pub. Co. v. Federal Trade Commission*, 85 F. (2d) 522, 525-526 (C. C. A. 2d). It follows from these established principles that petitioners' practices may be illegal under the Trade

Commission Act even though they did not offend against the Sherman Act, but that if they did violate the latter statute they were plainly unlawful under the Trade Commission Act.

Petitioners' combination comes within the numerous decisions of this Court holding that any substantial restraint of interstate trade by means of a boycott violates the Sherman Act. We shall therefore rest our defense of the Commission's order primarily upon that ground.

Petitioners do not deny that they employed the weapon of the boycott to restrain interstate trade and competition. Their agreement not to deal with any retail store which failed or refused to sign a Declaration of Cooperation constituted a primary boycott of non-signatory stores. Through the instrumentality of this boycott and threat of boycott, petitioners induced some 1,600 stores not to purchase hats copied from petitioners' designs and this constituted a secondary boycott of the manufacturers of copied hats.⁸

⁸ "Trade association boycotts, in the nature of things, are group or combination boycotts. * * * The inducement of sellers or purchasers to refrain from selling or patronizing nonmember competitors of the Association results in a secondary boycott in the competitive struggle." Handler, *The Sugar Institute Case and the Present Status of the Anti-Trust Laws*, 36 Columbia Law Rev. 1, 14.

In passing upon the legality of boycotts by other than labor organizations, this Court has made no distinction between primary and secondary boycotts. The distinction may

The boycott substantially restrained interstate trade and competition. It denied to retail stores opportunity to deal in a free and untrammelled market. It required them to elect whether they would be shut off from the entire output of the so-called style originators banded together in the Guild or be shut off from all hats which the Guild members might determine were copies of designs which they had originated. The restraint upon the manufacturers of "copied" hats was equally direct and substantial. By the combination, 1,600 of the country's leading retail establishments were closed as outlets for this product. The power and capacity to restrain trade vested in the combination is sufficiently indicated by two stipulated facts (1) that every "high grade" retail dealer in women's hats was normally "required" to make at least some purchases from petitioners and (2) that the combination comprised, as petitioners represented to the retail trade, "practically every important creative firm in the millinery industry" (R. 89, 92; Ex. 7, R. 108).

This Court has repeatedly held that a combination to refuse to deal with third persons, or to deal with them only upon acceptance of conditions demanded by the boycotting group, violates the Sherman Act if the combination imposes any substantial restraint

sometimes be important in boycotts by labor organizations where the incidence of the Sherman Act may be affected by exemptions given by the Clayton Act or by other special factors. See *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 466, 474-7; *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 502-4, 507-8. See *United States v. Hutcheson*, No. 43 this Term.

upon interstate trade or competition (*infra*, pp. 15-16). Petitioners seek to escape the authority of these decisions by contending (1) that the style piracy against which their combination was directed is "unethical" and uneconomic, disadvantageous to producers, distributors, and consumers, and hence a species of "unfair competition" or a "trade abuse"; and (2) that a boycott entered into for the purpose of eliminating "unfair competition" or a "trade abuse" may be defended upon the ground that the restraints which it imposes are reasonable and therefore not illegal.

The Government wishes to meet at the outset the contention that a combination to control the course of trade, through the weapon of the boycott, is open to the defense that this coercive use of power may escape the prohibitions of the Sherman Act if the boycotters can successfully show that they were engaged in stamping out practices which they deem inimical to themselves and to the industry as a whole.

II

A COMBINATION TO USE THE INSTRUMENTALITY OF THE BOYCOTT TO EXCLUDE OTHERS FROM ALL OR A PART OF THE MARKET IS ILLEGAL UNDER THE SHERMAN ACT AND CANNOT BE JUSTIFIED UPON THE GROUND THAT ITS PURPOSE IS TO ELIMINATE A TRADE ABUSE

1. This Court has consistently held that combinations which use the instrumentality of the boycott to exclude others from the market, or to impose conditions or limitations upon the conduct of their interstate trade, violate the Sherman Act. In none of

the leading decisions, set out in the margin,⁹ did this Court find it necessary to enter upon an inquiry into the reasonableness of the restraint. A restraint "aimed at compelling third parties and strangers involuntarily not to engage in the course of [inter-state] trade except on conditions that the combination imposes" and restricting their "liberty" to engage in such trade is an unreasonable restraint forbidden by the Sherman Act. *Loewe v. Lawlor*, 208 U. S. 274, 293-294.

In the recent case of *Apex Hosiery Co. v. Leader*, 310 U. S. 469, this Court said (at p. 497):

The common law doctrines relating to contracts and combinations in restraint of trade were well understood long before the enactment of the Sherman law. They were con-

⁹ *Montague & Co. v. Lowry*, 193 U. S. 38; *Loewe v. Lawlor*, 208 U. S. 274; *Straus v. American Publisher's Ass'n*, 231 U. S. 222; *Eastern States Lumber Dealers Ass'n v. United States*, 234 U. S. 600; *Binderup v. Pathe Exchange, Inc.*, 263 U. S. 291, 311, 342; *Bedford Cut Stone Co. v. Journey-men Stone Cutters' Ass'n*, 274 U. S. 37, 54; *Paramount Famous Lasky Corp. v. United States*, 282 U. S. 30, 43-44; *United States v. First National Pictures, Inc.*, 282 U. S. 44, 54; *Sugar Institute, Inc. v. United States*, 297 U. S. 553, 587-589, 601; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 220-221. *Anderson v. United States*, 171 U. S. 604, is sometimes cited as a contrary authority. That case held that an agreement by members of an exchange, composed of traders in live-stock on a stockyards, not to deal with any non-member trader did not violate the Sherman Act. The decision has subsequently been treated as resting on the holding that the facts did not disclose any restraint upon interstate commerce coming within the purview of the act. *Montague & Co. v. Lowry*, *supra*, p. 48; *Loewe v. Lawlor*, *supra*, p. 297; *Swift & Co. v. United States*, 196 U. S. 375, 397-398.

tracts for the restriction or suppression of competition in the market, agreements to fix prices, divide marketing territories, apportion customers, restrict production, and the like practices, which tend to raise prices or otherwise take from buyers or consumers the advantages which accrue to them from free competition in the market * * *

The Court then observed (at p. 498):

* * * the legislators found ready at their hand the common law concept of illegal restraints of trade or commerce. In enacting the Sherman law they took over that concept by condemning such restraints wherever they occur in or affect commerce between the states. They extended the condemnation of the statute to restraints effected by any combination * * * having those effects on the competitive system and on purchasers and consumers of goods or services which were characteristic of restraints deemed illegal at common law * * *

In *Johnson v. Joseph Schlitz Brewing Co.*, 33 F. Supp. 176, 181 (D. C. E. D. Tenn. S. D.), an agreement by three brewing companies not to sell to each other's customers was held to violate the Sherman Act. After an extended review of the decisions of this Court, the conclusion was reached that

To fix customers in agreement with others is inherently as bad as to fix prices. Both stifle competition and lead to monopolistic power.

As this Court observed in *Federal Trade Commission v. Raymond Bros.-Clark Co.*, 263 U. S. 565, there

is a difference between the refusal of a single concern, acting alone, to deal with another, and a combination with others to boycott a third person. In its opinion the Court stated (p. 574):

An act lawful when done by one may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the public or to the individual against whom the concerted action is directed.

2. The Circuit Court of Appeals for the Second Circuit, after its decision in the case at bar, again upheld the validity of an order of the Federal Trade Commission directed against a boycott combination corresponding in all essential respects to that here involved, *Fashion Originators' Guild v. Federal Trade Commission*, argued herewith, No. 537, this Term.¹⁰ The rationale of the decision in No. 537 has a direct bearing on the disposition of the present case. The court there found it unnecessary to decide whether style piracy was a socially useful form of competition¹¹

¹⁰ The decision, which is reported in 114 F. (2d) 80, is written by Judge Learned Hand, the other members of the court being Augustus N. Hand and Chase. In the instant case the court was composed of Judges Swan, Augustus N. Hand, and Clark.

¹¹ In this case, the court considered whether style piracy was a socially useful form of competition and concluded that it was. It stated (R. 180-181) that the purpose and necessary effect of petitioner's combination was to maintain their "price structure," that style piracy made "the latest fashions readily available to" purchasers of small means, and that this form of competition was therefore socially desirable.

and held that the character of the combination brought it within the direct condemnation of the Sherman Act. Judge Learned Hand, speaking for the court, said (at p. 84):

Certainly it is not true that the lawfulness of every combination depends upon whether it "reasonably" corrects trade "abuses"; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful *per se*, the purposes of the confederates will not justify them. *Sugar Institute v. United States*, *supra*, 599 (297 U. S. 553). The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing * * *

* * * * *

Price fixing is not, however, the only means unlawful *per se*; the interest of the consumer is not all that determines the "reasonableness" of a contract "in restraint of trade." It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain.

This conclusion that a boycotting combination of the kind here involved is *per se* illegal under the Sherman Act is supported not merely by the cases which were previously cited and discussed (*supra*, pp. 15-18). It derives additional strength from the basic ground upon which price fixing has been held

to be *per se* illegal under the Sherman Act, namely, its destructive effect on competition and a free market. The aim and result of price fixing "is the elimination of one form of competition" and this aim and result runs counter to the assumption on which the Sherman Act is based, that "the public interest is best protected from the evils of monopoly and price control by the maintenance of competition." *United States v. Trenton Potteries*, 273 U. S. 392, 397. A price-fixing agreement frequently gives its members power to control market prices. The Act outlaws such agreements because they confer "power to destroy or drastically impair the competitive system." *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 221. But a combination which tampers with price structures is unlawful even if the members are in no position to control the market for "to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces." *United States v. Socony-Vacuum Oil Co.*, *supra*, at p. 221.

A combination to exclude competitors or a competitive product from the market is well within the principles so recently affirmed by this Court. Such a combination *directly* destroys competition and freedom of the market. Petitioners' boycott, by excluding "copied" hats from the market, enabled them to capture a larger share of the market than would otherwise have been theirs. Each petitioner

was enabled to monopolize the market with respect to the designs which it had originated.¹² Each was enabled to fix its prices without fear of competition from lower priced hats of like design. As to all the designs which petitioners assumed to preempt, consumers were denied the advantage of competitive offerings and other manufactures were denied opportunity to compete in either price or quality. The destruction of competition and of freedom of the market was thus more direct and serious than where buyers or sellers combine for the purpose of fixing, manipulating, or stabilizing prices. The fact that the combination did not suppress all competition does not make the restraint any the less illegal. *United States v. Socony-Vacuum Oil Co.*, *supra*, at p. 220; *Paramount Famous Lasky Corp. v. United States*, 282 U. S. 30, 44.

3. The argument that any such combination can be justified upon the ground that its purpose is to eliminate a trade abuse has been passed upon and definitively rejected by this Court. The argument advanced on behalf of petitioners is analogous in essential respects to that addressed to this Court in *Eastern States Lumber Dealers Ass'n v. United States*,

¹² The court in the *Fashion Originators' Guild* case in referring to this aspect of the combination, said (p. 85): "It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above over designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods."

234 U. S. 600, 613. In reply the Court declared (at p. 613):

The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.

An analogous contention was raised on behalf of the illegal combination involved in *United States v. First National Pictures, Inc.*, 282 U. S. 44, where the principal distributors of motion-picture films had agreed not to enter into new contracts with purchasers and transferees of motion-picture theaters unless the latter accepted certain conditions which the distributors had agreed to impose. The District Court found that the purpose of the agreement was to eliminate "trade abuses" which were "general" and caused "substantial losses" and that "such restraints as may have resulted from what was done were incidental to this legitimate purpose."¹³ On the basis of these findings the District Court concluded that the restraint was not unlawful. This Court took a different view. It observed (at p. 54) that the obvious purpose of the agreement was to

¹³ *United States v. First National Pictures, Inc.*, 34 F. (2d) 815, 816, 819 (D. C. S. D. N. Y.).

secure "concerted action for the purpose of coercing certain purchasers of theaters by excluding them from the opportunity to deal in a free and untrammelled market," and, accordingly, it held that such an agreement "conflicts with the Sherman Act." Since no reference was made to the District Court's findings, this Court, in effect, held them to be irrelevant and insufficient to justify the defendants' boycotting combination.

United States v. Socony-Vacuum Oil Co., 310 U. S. 150, at 221, gives the most recent answer to the contention that any combination destructive of a free market and the competitive system may ever justify its existence. This Court, speaking through Mr. Justice Douglas, stated (at pp. 221-222):

The Act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress. * * *

We submit that a similar answer should be made in this case to the argument on behalf of the combination against which the order of the Commission is directed.

4. The inferior Federal courts in cases arising under the Trade Commission Act have on numerous occasions applied the principles enunciated by this Court under the Sherman Act and have consistently held that restraints of interstate competition by a group boycott is an unfair method of competition which the Trade Commission is authorized to prohibit.¹⁴ These decisions should be approved by enforcing the order in the case at bar.

III

THE COMBINATION CANNOT BE JUSTIFIED ON THE GROUND THAT COPYING DESIGNS CREATED BY A COMPETITOR IS UNFAIR COMPETITION OR "EQUITABLE TORT"

In the *Fashion Originators' Guild* case, No. 537, this Term, the Circuit Court of Appeals for the Second Circuit stated (at 85-86) that the order should be understood as not applying to "cases in which a retailer knowingly buys dresses, access to the design

¹⁴ *National Harness Mfrs.' Ass'n v. Federal Trade Commission*, 268 Fed. 705, 710-712 (C. C. A. 6th); *Western Sugar Refinery Co. v. Federal Trade Commission*, 275 Fed. 725, 733, 741-742 (C. C. A. 9th); *Wholesale Grocers' Ass'n v. Federal Trade Commission*, 277 Fed. 657, 663-664 (C. C. A. 5th); *Southern Hardware Jobbers' Ass'n v. Federal Trade Commission*, 290 Fed. 773, 779-781 (C. C. A. 5th); *Chamber of Commerce v. Federal Trade Commission*, 13 F. (2d) 673, 687, 696-697 (C. C. A. 8th); *Arkansas Wholesale Grocers' Ass'n v. Federal Trade Commission*, 18 F. (2d) 866, 868, 872 (C. C. A. 8th), certiorari denied, 275 U. S. 533; *Federal Trade Commission v. Wallace*, 75 F. (2d) 733, 735-736 (C. C. A. 8th); *Butterick Pub. Co. v. Federal Trade Commission*, 85 F. (2d) 522, 525-526 (C. C. A. 2d).

of which has been procured (1) by fraud, (2) bribery or other crime, (3) breach of contract, or (4) before the design has 'by publication' come into the public demesne." The Second Circuit thus apparently assumed that a concerted refusal to deal is proper if its purpose and sole effect is merely to prevent conduct which is illegal or tortious. This rationale, even if sound, does not in any way aid the petitioners.

1. The petitioners, at the outset, cannot show that copying or imitating their designs constitutes a species of unfair competition or equitable tort. Whether or not it be a trade abuse, such copying does not result in that type of injury for which the courts give redress. When a hat embodying a so-called original design is offered for general sale, this is a publication of the design and, thereafter, the originator has no further property right in the design and no right to exclude others from its use. *Cheney Bros. v. Doris Silk Corp.*, 35 F. (2d) 279 (C. C. A. 2d), certiorari denied, 281 U. S. 728; *Fashion Originators' Guild v. Federal Trade Commission*, 114 F. (2d) 80, 83-84, No. 537, this Term.

(a) The *Cheney Bros.* case is the leading authority for the proposition that after goods of "original" design have been offered for general sale, competitors are free to copy the design at will.¹⁵ Judge Learned

¹⁵ See also *Krem-Ko Co. v. R. G. Miller & Sons, Inc.*, 68 F. (2d) 872 (C. C. A. 2d); *Sinko v. Snow-Craggs Corp.*, 105 F. (2d) 450, 452 (C. C. A. 7th); *Lewis v. Vendome Bags, Inc.*, 108 F. (2d) 16, 18 (C. C. A. 2d), certiorari denied, 309 U. S.

Hand there pointed out the almost insuperable difficulties which would confront any court were it to recognize any property right in a published design, in ascertaining both the circumstances giving rise to the right and its scope and limitations. He stated (p. 280) that it would have to determine the question of original creation *tabula rasa*; that it would have to dispense with the conditions upon the creation of the right imposed by the "copyright law"; that it would not know whether the duration of the right would be that prescribed by copyright law or "should extend as long as the author's grievance"; that the right would logically embrace not merely designs, but processes, machines, and secrets as well. He then held, on behalf of the court, that this was a matter in which Congress alone was authorized to act, saying:

To exclude others from the enjoyment of a chattel is one thing; to prevent any imitation of it, to set up a monopoly in the plan of its structure, gives the author a power over his fellows vastly greater, a power which the Constitution allows only Congress to create.

Other aspects of this complicated problem are set forth in the quoted opinion, to which we respectfully refer the Court.

660; *Electric Auto-Lite Co. v. P. & D. Mfg. Co.*, 109 F. (2d) 566, 567 (C. C. A. 2d).

For favorable comment in legal periodicals on the *Cheney Bros.* case, see, Case Comment, 43 Harv. L. Rev. 330 (1929); Case Comment, Col. L. Rev. 135 (1930); Note, 14 Minn. L. Rev. 537, 544-545 (1930); Chafee, *Book Review*, 43 Harv. L. Rev. 1328, 1330 (1930).

(b) Petitioners urge that the copying of their designs is analogous to the situation presented in *International News Service v. Associated Press*, 248 U. S. 215. However, they fail to mention the fact that in the *Cheney Bros.* case (the soundness of which they do not attack¹⁶) the Second Circuit held (p. 280) that the *International News* decision covered only "situations substantially similar to those then at bar," that it was not intended to have the effect of creating "a sort of common-law patent or copyright for reasons of justice", and that it did not apply to the copying of published original designs.

We submit that this interpretation of the limited scope of the *International News* decision is sound.¹⁷ The holding in that case was that when the members of a newsgathering agency have created, at considerable expense, something of value which dissipates upon publication, publication constitutes an

¹⁶ Petitioners in the *Fashion Originators Guild* case likewise do not attack the soundness of this decision but they attempt to distinguish it (Br., p. 32) upon the ground that it involved only the "casual copyist." We submit that the case cannot be distinguished upon this ground. Not only is there nothing in the court's statement of the facts to indicate that the defendant there was a casual copyist but, of more importance, the reasons given for the decision are equally as applicable to deliberate, continuous copying as to "isolated reproduction."

¹⁷ The Court divided five to three. Mr. Justice Clarke did not participate in the decision, Mr. Justice Brandeis dissented, and Justices Holmes and McKenna were of the opinion that *International News Service* was entitled to use the news gathered by *Associated Press* provided that when newspapers served by the former organization published the news they made a due acknowledgment of its source.

abandonment of any right of exclusive use with respect to use by the general public but not with respect to commercial exploitation by a competitor. This theory that a competitor may not appropriate as his own the product of another's labor was there enunciated in circumstances materially different from those at bar. There was no difficulty in the *News* case in determining the originator of the copied product; but a determination of originality of the design of a fabric or wearing apparel requires exceedingly close distinctions in a field without judicial landmarks. There was no problem there similar to that raised here with respect to the multiplicity of determinations which recognition of the right to design protection would entail. The added burden of litigation in the design field would literally be staggering.¹⁸ The length of the protection afforded in the *News* case was merely for a few hours and, so far as appears from the majority opinion, would not seriously affect the ability of the public to obtain adequate sources of information. But cf. Mr. Justice Brandeis, dissenting, 248 U. S. at 262-267. Petitioners' argument in the case at bar seems to be that protection should be given during the entire "fashion" season. Such protection in this field would deprive the consuming public of the right to buy "fashion" as typified in the protected designs except on such terms as the originator of any design

¹⁸ See Worthy, *The Millinery Industry*, Work Materials No. 53, NRA Industry Studies Section, pp. 37-38 (quoted in Appendix to petitioners' brief, pp. 39, 46-47.)

chose to extend. And there would be no assurance that the multitude of designs entitled to protection would not blanket the style field and give their originators, in combination, a monopoly of the "fashion" which they assertedly sell (see *infra*, p. 37).

These circumstances can scarcely be deemed immaterial with respect to whether the *International News* case should be extended into fields as yet unexplored.¹⁹

(c) In an effort to bolster the proposition that the systematic copying of published designs is unfair competition, petitioners in No. 537 (*Fashion Originators' Guild* case) urge that an actionable tort is proved whenever a plaintiff can establish the loss of trade due to conduct on the part of a defendant which society condemns. Granting that damage could be proved, petitioners (in No. 537) fail to make a convincing argument that the practice of copying published designs is a wrong which the law should recognize. They frankly admit that no statutory protection has been extended to published designs except insofar as the design patent laws are applicable, and they do not claim to have complied with those laws. Their entire appeal is directed to the

¹⁹ The courts have shown little inclination to apply the *International News* decision to other types of copying. Note, *The Imitation of Advertising*, 45 Harv. L. Rev. 542, 543-545 (1932); *Developments in the Law*, 46 Harv. L. Rev. 1171, 1193-1195 (1933); Note, *Recognition of Legal Rights in Ideas*, 47 Harv. L. Rev. 1419, 1426 (1934); Handler, *Unfair Competition*, 21 Iowa L. Rev. 175, 191 (1936); *RCA Mfg. Co. v. Whiteman*, 114 F. (2d) 86, 90 (C. C. A. 2d).

Court's sense of moral justice. To lend color to their claim the practice of copying published designs and those who engage in the practice are referred to throughout the brief as "style piracy," "style pirates," "professional parasitism," "parasite," "cheat," and "shocking to ordinary business morality" (for example, see petitioners' brief in No. 537, pp. 18, 24, 25, 32).²⁰ While such terms may indicate the attitude of one part of an industry toward another part, it can hardly be said that they are indicative of the moral judgment of society.

Petitioners (in No. 537) insist that the approval by the Federal Trade Commission of codes of fair competition condemning the copying of original designs amounts to a condemnation of the practice by the Commission. Those codes are prepared by industry and are merely a statement of what the industry regards as ethical conduct. There are no sanctions by which the codes may be enforced. Likewise, the NRA codes cited by petitioners (in No. 537) lend little support to their argument. Provisions in those codes prohibiting so-called design piracy were sought by industry. After the first year few if any

²⁰ The technique adopted is analogous to that customarily used in attempting to justify price maintenance by referring to those who refuse to maintain the established price as "chiselers," "price cutters," etc. Likewise, the literature on the evils of "style piracy" is certainly no more extensive than the literature on the evils of "price cutting." In the absence of statutory prohibitions, the courts have never regarded "price cutting" as a wrongful conduct giving rise to an action in tort.

provisions of this type were approved by the Administrator. The principal objector to such provisions was the Consumers' Advisory Board whose duty it was to protect the public interest. Johnston & Fitch, *Design Piracy*, Work Materials No. 52, Trade Practice Studies Section (March 1936), pp. 131-137.

Petitioners' argument in both of these cases (Nos. 251 and 537) completely disregards the fact that under the Constitution the limits of wrongful conduct in this particular field are defined by the patent and copyright laws. In accordance with the requirements of the Constitution those laws permit a limited monopoly for the exploitation of new inventions or ideas. To adopt petitioners' argument (in Nos. 251 and 537) would be to extend the monopolistic privilege far beyond the limits contemplated by the Constitution or statutes because the alleged social undesirability of copying would continue as long as the monopoly was profitable. Furthermore, the monopoly²¹ would be created by judicial fiat in direct conflict with the legislative declaration of public policy contained in Section 2 of the Sherman Act, which forbids the creation of any monopoly regardless of purpose.

2. (a) In any event, the mere existence of unfair competition does not warrant petitioners in adopting

²¹ In the instant case, the court below said (R. 376): * * * the courts have refrained from enjoining the pirate because they will not support a monopoly in an unpatentable idea. It would be strange to say that the Guild may establish this same monopoly by extrajudicial methods.

whatever form of self-help they choose. *Sugar Institute v. United States*, 297 U. S. 553, 559. The system under which ladies hats (and dresses, in No. 537) are manufactured and distributed is concededly one in which a substantial number of manufacturers systematically "copy" the designs originated by others. It is that system which the petitioners are seeking to modify by means of a boycott designed to exclude the copyists from the market. The assertion that the Federal Trade Commission Act and the Sherman Act does not protect from interference trade which has no right to exist begs the question. As this Court has declared, in effect, the governing principle of the Sherman Act is that the interest of the public is best served by protecting from boycotting combinations that system of competition which the public authorities have permitted to develop and exist (*supra*, pp. 20-21). The reliance upon the allegedly unfair competition is merely another variant of the ostensible justifications for price-fixing and other proscribed combinations which have been rejected in numerous cases arising under the Sherman Act (*supra*, pp. 21-23, 29-30).

(b) The contention that style piracy is a type of unfair competition or equitable tort would, if sound; be ground for an injunction forbidding the continuation of the practice. Cf. *International News Service Co. v. Associated Press*, 248 U. S. 215. The Federal Trade Commission, in any event, would appear to have ample authority to enjoin such practice if, in

fact, it is an unfair method of competition. And the remedy of statutory aid to the industry through action by Congress is always open. The failure of these authorities as well as the federal courts to prohibit copying as a business practice under the competitive system can scarcely be construed as an unrestricted license to private groups to use self-help to accomplish the same end. *Sugar Institute v. United States*, 297 U. S. 553, 559.

(c) The factors bearing upon the wisdom of extending the doctrines of unfair competition enunciated in the *International News* case into the field of design likewise bear directly on the issue more immediately before this Court. They show that such an extension should be made only after a painstaking analysis of all the economic and social consequences that might be expected. The cases under the Sherman Act have consistently rejected the analogous contention that a price-fixing or other proscribed combination can be justified before the judiciary by an examination of the social and economic consequences of current business practices (*supra*, pp. 20-21, 23). See *United States v. Socôny-Vacuum Oil Co*, 310 U. S. 150, 220-221.

The contentions made on behalf of petitioners and answered under our Points II and III may be summarized as follows:

Petitioners are asking this Court to hold that the Sherman Act and the Trade Commission Act permit private interests to use the instrumentality of the boycott to police an interstate industry and to stamp out widespread business practices merely because the

boycotting combination itself conceives them to be "unfair competition" or "unethical." They are asking this Court to sanction employment of this private policing system to stamp out such practices despite the fact that only Congress, not the courts, has been held to possess such power.²² They are asking the Court to give this sanction notwithstanding the fact that Congress has repeatedly, during the last 25 years, declined to act.²³ They are asking the Court to approve use of the boycott by a strategically located minority of an industry to achieve a far-reaching change in industrial practices which a vast majority of the members of the industry strongly oppose.²⁴

²² In *Cheney Bros. v. Doris Silk Corp.*, *supra*, the court said (p. 281): "Judges have only a limited power to amend the law; when the subject has been confided to a Legislature, they must stand aside, even though there be an hiatus in completed justice. An omission in such cases must be taken to have been as deliberate as though it were express, certainly after long-standing action on the subject-matter. Indeed, we are not in any position to pass upon the questions involved, as Brandeis, J., observed in *International News Service v. Associated Press*."

²³ Since 1914 some 21 bills for design protection have been introduced into Congress but although some have had success in one branch of Congress, none has yet been enacted. *Self-protection of Design Creation in the Millinery Industry*, Note, 49 Yale L. J. 1290, 1293 (1940). The bills covering the period 1914-1935 are set forth in Johnston & Fitch, *Design Piracy*, Work Materials No. 52, N. R. A. Trade Practice Studies Section, p. 5. For a detailed statement of the most important of these legislative proposals, see Johnston & Fitch, at pp. 153-165.

²⁴ Worthy, *supra* note 18, at p. 86, in explaining why no provision dealing with style piracy was included in the NRA Millinery Code says: "The controlling fact was that

IV

PETITIONERS FAILED TO ESTABLISH EVEN THAT THE
 "STYLE PIRACY" WHICH THEY COMBINED TO PRE-
 VENT IS A TRADE ABUSE

Even if there can be any justification for a restraint of trade by a boycott, that boycott is at least *prima facie* an illegal restraint,²⁵ and the burden rests on petitioners to justify that restraint. The justification upon which they rely is that the copying of their designs is unfair, unethical, and a trade abuse. We submit that the evidence falls far short of affirmatively establishing that this is a correct characterization of the copying here involved.

only a small minority was in favor of the elimination of style piracy." He further said that by and large, it was safe to assume that the style originators who favored such a provision "do not constitute much more than 10 percent of the industry."

Johnston & Fitch, *supra*, p. 55, reports that "it is stated that protection [of designs] would perhaps put 80% of the industry out of business."

There is a similar division of opinion in the women's dress industry. Johnston & Fitch, *supra*, pp. 176-178. It is there reported that manufacturers producing garments wholesaling at \$10.75 or above "are apparently satisfied"; that "dissatisfaction has crystallized in the lower price groups"; that manufacturers whose garments are wholesaled under \$6.75, "are faced with the necessity of accepting a large volume of returns [20,000 dresses were 'returned to copyists' during three months] * * * and * * * must either begin to originate their designs and seek Guild protection or cater to chain stores and similar outlets"; that 75 firms in the \$4.75 market had organized an association to protect their interests, charging the Guild with engaging in "such unfair competition as monopoly, boycott, and price-fixing."

²⁵ Compare *United States v. American Livestock Commission Co.*, 279 U. S. 435, 437; Restatement of Torts, Sec. 765 (1).

All that the evidence shows is that those who originate their own designs go to considerable expense in devising new designs; that these design originators are known in the industry as "original creators"; that copying their designs is commonly known in the industry as "style piracy"; and that such copying adversely affects the sale of hats of "original" design.²⁶ Even if the terminology in use in the industry be taken as indicating that the industry considers copying of designs an unfair, or opprobrious practice, this is not decisive of its character. See *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 220-221. Still less can deficiencies in the evidence be supplied by reliance on the conclusion, reached in certain cases on other records and other facts, that copying of original designs for women's clothing is an undesirable trade practice. See *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc.*, 90 F. (2d) 556 (C. C. A. 1); *Wolfenstein v. Fashion Originators' Guild of America, Inc.*, 244 App. Div. (N. Y.) 656.

Petitioners having failed to meet the burden resting on them to show affirmatively that copying of so-called original designs is a trade abuse or evil, the Court would not be warranted, in the absence of such showing, in assuming this to be the case. The information requisite to passing judgment upon the good or bad character of what petitioners call "style piracy" is almost completely lacking. The

²⁶ R. 13, 92; Exs. 14-A and 14-B, 15-A and 15-B, R. 116-119.

evidence does not show that the designs which petitioners label "original" creations involve any substantial element of creativeness. The evidence does not negative the likelihood that mere difference is the actual touchstone of a so-called original design. It does show that petitioners' designs were largely "adaptations" of Parisian models (R. 11), and it does not negative the probability that the line between such adaptation and imitation thereof is a shadowy one, lacking any real significance.

Such inferences as the evidence warrants are adverse to petitioners. Twenty-seven manufacturers were named as respondents in the Commission's complaint and they were all design originators (R. 9-10, 11). There are other design originators in the industry (R. 11). Each must offer a sufficient number of models to satisfy the varying tastes and requirements of its customers. With upwards of 27 firms thus engaged in producing "original" designs, it may well be inferred (1) that "original" means no more than "different" and (2) that this output of "original" designs would, collectively, blanket the market with the result that other manufacturers would have to make and sell either outmoded styles or exact reproductions of Parisian models.²⁷

²⁷ Under the similar set-up for registration of "original" designs and boycotting copied designs in effect in the women's dress industry, from 40,000 to 50,000 "original" designs were registered each year. *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc.*, 90 F. (2d) 556, 562 (C. C. A. 1).

Petitioners themselves show (Br., p. 4) that what they really seek to exploit and combined to protect is, not originality of design, but exclusiveness pure and simple.²⁸

Petitioners; apparently aware that the record is barren of evidence to support their claim that so-called style piracy is a competitive evil, rely upon two mimeographed bulletins issued under the auspices of the Division of Review of NRA.²⁹ We do not deny that the Court may take judicial notice of these bulletins, but the validity of the Commission's orders must be determined on the basis of the evidence before the Commission and the facts stated in these bulletins and in other documents referred to by petitioners are not part of this evidence. Whatever the proper place of judicial notice as an aid in expediting administrative proceedings,³⁰ petitioners hardly can convict the Commission of error on the basis of additional facts presented by way of judicial notice in the reviewing courts. Further-

²⁸ Petitioners, under the heading of "Analysis of 'Style Piracy,'" assert that a woman buying a hat requires something more than it be in fashion: "She wants it to be distinctive—that is to say, her hat. It must be different from other hats she sees, so that it will be her hat. * * * The number of duplications of the hat must not be too great in any particular area for otherwise women will see their hats 'walking down the street' which they do not like."

²⁹ This Division was established by an Executive Order issued in June 1935 after the regulatory provisions of Title I of the National Industrial Recovery Act had been held unconstitutional.

³⁰ *United States v. Abilene & So. Ry. Co.*, 265 U. S. 274, 288-290; *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 93-94.

more, even though judicial notice may be taken of the bulletins themselves, this Court has held that where the details of a particular practice in an industry are an issue in a case, this Court will not piece them out by judicial notice but will require that they be established by competent proof. *Borden's Co. v. Baldwin*, 293 U. S. 194, 208-209.

Aside from these objections the contents of the bulletins fail to support petitioners' position. We have already pointed out (*supra*, note 24, pp. 34-35) that they report that a vast majority of the industry is opposed to outlawing so-called style piracy. On the broader economic aspects of this practice, the bulletins present the conflicting contentions of proponents and opponents but express no conclusion on the merits of the controversy.³¹

V

PRICE MAINTENANCE WAS AN OBJECTIVE AND EFFECT OF PETITIONERS' COMBINATION AND IT WAS THEREFORE PER SE ILLEGAL UNDER THE SHERMAN ACT

The combination formed by petitioners was one for price maintenance. The underlying objective of the combination was to enable petitioners to maintain the high prices at which they marketed their hats of "original" design, by eliminating as a market factor the source of the only really effective price competition in the field of high-priced stylish millinery,

³¹ See the extract from Worthy, *supra*, quoted in Appendix to petitioners' brief, pp. 39-53; Johnston & Fitch, *supra*, pp. X-XII, XV-XVI, 58-64, 193-202.

"copied" hats. The Commission found (R. 15) that the "capacity, tendency, and result" of the "purpose plan and agreement" entered into by petitioners have been "unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce:"

* * * * *

(b) By depriving the public of the benefits of normal price competition among retailers of stylish hats for women, and

* * * * *

(d) By increasing the price of stylish hats for women to retailers and consumers through the protection of profits resulting from respondents' [petitioners'] activities to eliminate from the trade alleged copies of styles which they claim and adjudge themselves to have originated;

There is evidence to support these findings. In one of the circular letters soliciting Declarations of Cooperation which the Guild sent to retail stores, it wrote (Ex. 13, R. 115):

we have all the important stores in New York City and the main centers not only signed to our agreement, but also enthusiastic in this effort to protect the value of their merchandise.

In another such letter the Guild wrote that if the retail merchants will "back up" the Guild program, their customers "will not complain that the hat purchased yesterday from you is now on sale next door at half price" (Ex. 14-A and 14-B, R. 117).

In a letter to an officer of a store which had not yet signed the Declaration, the Guild wrote: "The agreement tends to improve price levels, curtail mark-downs, and establish the value of the merchandise on hand" (Ex. 21, R. 163).

The foregoing specific evidence, as well as the stipulated facts as to the general character of petitioners' combination and of their activities thereunder, clearly support the inferences which the Commission drew therefrom.³² A court may not substitute its judgment for that of the Commission as to the inferences reasonably to be drawn from the evidence (*Federal Trade Commission v. Pacific States Paper Trade Ass'n*, 273 U. S. 52, 63), and in the present case the court below accepted and approved the finding that price maintenance was a major objective of the combination.³³

In these circumstances, *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, establishes the illegality of petitioners' combination. There, as here, there was no agreement to charge or to pay uniform prices and no attempt to eliminate all price competition; but there, as here, the combination undertook to maintain and to stabilize prices by

³² Compare *Johnston & Fitch, supra*, where, in discussing design piracy, it is stated (p. X): "The problem, typically, is a price problem."

³³ The court said (R. 180, 181): "It is safe to say that the members of the Guild instituted their antipiracy campaign to protect their markets and price levels, as well as to improve business morals within the industry. * * * The purpose of the milliners, and the necessary effect of their combination, is to maintain their price structure, * * *"

eliminating from the market the product chiefly instrumental in rendering prices truly competitive.³⁴ There, as here, the defense interposed was that the concert of action constituted a reasonable plan and device to prevent or mitigate competitive evils. The Court in the *Socony-Vacuum Oil* case rejected this defense. It held that the Sherman Act renders illegal every combination formed for the purpose and with the effect of controlling, manipulating, or otherwise tampering with prices or the price structure. In that case the means used, group purchasing, was comparatively innocuous. *A fortiori*, the combination in the present case is illegal since the means used, the boycott, is itself illegal.

VI

EVEN IF THE REASONABLENESS OF THE RESTRAINTS IMPOSED BY PETITIONERS' COMBINATION WERE OPEN FOR CONSIDERATION, THE ARBITRARY AND INEQUITABLE MANNER IN WHICH THE BOYCOTT WAS APPLIED WOULD MAKE THE RESTRAINTS UNREASONABLE AND ILLEGAL

Finally, if we assume *arguendo* (1) that a boycotting combination like the present one is not illegal *per se* under the Sherman Act, (2) that petitioners have affirmatively established that style piracy is a trade abuse, and (3) that petitioners' combination is not one for price maintenance which is *per se* illegal, petitioners even then could not succeed. The restraints imposed would still be unreasonable and

³⁴ In that case the product eliminated was "distress" gasoline; in the instant case it is "copied" hats.

therefore illegal because of the arbitrary manner in which the boycott was enforced. The applicable rule is stated in *Sugar Institute, Inc. v. United States*, 297 U. S. 553, 599, *supra*:

The freedom of concerted action to improve conditions has an obvious limitation. The end does not justify illegal means. The endeavor to put a stop to illicit practices must not itself become illicit. As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them.

Petitioners' combination provided that in any case of alleged design "piracy," petitioners themselves or the Guild (which they dominated and controlled) would determine this question (R. 12). This method of enforcement, as applied to nonmembers of the Guild, was inherently unreasonable and arbitrary. It meant that when a dispute arose, those associated with one of the adversary parties had the sole voice in decision.

It is true that after the Commission had heard and decided the case petitioners filed a motion requesting it to set aside its findings and order and reopen the hearing, and one of the six grounds for the motion was that petitioners desired to submit "a revised method of determination of the originality of designs by independent arbitrators" (R. 35, 38). Whether this belated and indefinite proposal warranted reopening and reconsideration of the entire proceeding

called for an exercise of the Commission's discretionary authority, and clearly it did not abuse its discretion in denying the motion. See *International Association of Machinists v. National Labor Relations Board*, No. 16, this Term.

Moreover, even if the question of style piracy were to be determined by independent arbitrators, the restraints imposed by the boycott would not be free from the taint of unreasonableness. By reason of the boycott, competitors would be required to give a warranty on all goods sold to 1,600 of the country's leading retail stores that the goods sold "are not copies of styles originated by the members of The Millinery Quality Guild, Inc." (R. 13). On every such sale the competitor would be subjected to the risk that his goods would be returned unless he could successfully meet a charge of design piracy.³⁵ When it is borne in mind that so-called style piracy is not unlawful, that there are no definite criteria for determining either originality of design or what constitutes copying, and that the commercial life of a woman's hat is very short, it is clear that when competitors are subjected to the constant risk that their goods will be returned their trade is unreasonably constrained.

³⁵ Under the similar program in effect in the women's dress industry, it was reported that 20,000 dresses were returned to "copyists" in a three-month period (*supra*, note 24, p. 35).

CONCLUSION

It is respectfully submitted that the decree of the court below should be affirmed.

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✓ W. T. KELLEY,
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FEBRUARY 1941.

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SUPREME COURT OF THE UNITED STATES.

No. 251.—OCTOBER TERM, 1940.

Millinery Creators' Guild, Inc. (Formerly Millinery Quality Guild, Inc.),
et al., Petitioners,
vs.
Federal Trade Commission.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Second Circuit.

[March 3, 1941.]

Mr. Justice BLACK delivered the opinion of the Court.

This case presents virtually the same issues as *Fashion Originators' Guild of America, Inc. v. Federal Trade Commission*, this day decided. Here, as in that case, the Circuit Court of Appeals affirmed a Federal Trade Commission decree ordering the petitioners to cease and desist from certain practices found to have been done in combination and to constitute "unfair methods of competition" tending to monopoly.¹

The members of the Guild involved in this case are designers and manufacturers of women's hats. Their Guild operates a plan modelled after that of the Fashion Originators' Guild of America, Inc.

It was stipulated by the parties that "The capacity, tendency, purpose and result of the plan . . . and the acts and practices performed thereunder . . . have been, and now are, to restrain commerce by eliminating manufacturers of stylish hats . . . as to the outlets of their products and by limiting the retail dealers . . . as to their source of supply, and to deprive the public of the benefits, if any, of competition as to price or otherwise among retailers of stylish hats in this respect" Pursuant to the evidence and to the stipulation containing this statement, the Commission found that the effect of the plan was "unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce."

The respects in which the plan of the Millinery Creators' Guild differs from that of the Fashion Originators' Guild are not ma-

¹109 F. (2d) 175.

2 *Millinery Creators' Guild, Inc. vs. Fed. Trade Comm.*

* terial, and need not be set out in detail. Nor need the findings of the Commission be enumerated here. The Commission did find that the Millinery Creators' Guild had tended to hinder competition and create monopoly "By depriving the public of the benefits of normal price competition among retailers of stylish hats for women", a finding not made in the other case, but the presence or absence of such a finding is not determinative here. On the authority of *Fashion Originators' Guild of America, Inc. v. Federal Trade Commission*, the decision below is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.